

Chapter 5

Indigenous peoples and climate change

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Climate change has been regarded as a diabolical policy problem globally. The potential threat to the very existence of Indigenous peoples is compounded by legal and institutional barriers raise distinct challenges for our cultures, our lands and our resources.¹ More seriously, it poses a threat to the health, cultures and livelihoods of Indigenous peoples both here in Australia and around the world.

The importance of culture and its relevance to Indigenous people's relationship to our lands, is not completely understood and acknowledged in Australia. This is evidenced by the fact that governments continue to develop Indigenous land policy in isolation from other social and economic areas of policy. This is apparent in the development of climate change policy which has generally fallen on the shoulders of government departments responsible for climate change and the environment, absent of involvement from those departments responsible for Indigenous affairs or the social indicators such as health and housing.

Understanding the significance of the impacts of climate change on Indigenous peoples requires an understanding of the intimate relationships we share with our environments: our lands and waters; our ecosystems; our natural resources; and all living things is required. Galarrwuy Yunipingu expresses this relationship:

I think of land as the history of my nation. It tells me how we came into being and what system we must live. My great ancestors, who live in the times of history, planned everything that we practice now. The law of history says that we must not take land, fight over land, steal land, give land and so on. My land is mine only because I came in spirit from that land, and so did my ancestors of the same land...My land is my foundation.²

Professor Mick Dodson has also provided an explanation of the relationship between Aboriginal people and our 'country':

The word country best describes the entirety of our ancestral domains. All of it is important – we have no wilderness. It is place that also underpins and gives meaning to our creation beliefs – the stories of creation form the basis of our laws and explain the origins of the natural world to us – all things natural can be explained. It is also deeply spiritual. It is through our stories of creation we are able to explain the features of our places

1 United Nations Permanent Forum on Indigenous Issues, *Climate Change and Indigenous peoples*. At: http://www.un.org/esa/socdev/unpfii/en/climate_change.html (viewed 21 July 2008).

2 Aboriginal and Torres Strait Islander Social Justice Commissioner, *Native Title Report, January – June 1994* (1994). At: <http://www.austlii.edu.au/au/other/IndigLRes/1995/3/index.html>, (viewed 30 June 2008). As cited in Australian Catholic Social Justice Council, *Recognition: The Way Forward*.

and landscape. It is the cultural knowledge that goes with it that serves as constant reminders to us of our spiritual association with the land and its places. Even without the in depth cultural knowledge, knowing country has spiritual origins makes it all the more significant and important to us.

Country for us is also centrally about identity. Our lands our seas underpin who we are. Where we come from. Who our ancestors are. What it means to be from that place from that country. How others see and view us. How others identify us. How we feel about each other. How we feel about our families and ourselves. Country to us is fundamentally about our survival as peoples.³

The words of Yunipingu and Dodson highlight the fact that our land is fundamental to our health and well-being. Indigenous law and life originates in and is governed by the land. Indigenous identity and sense of belonging comes from our connection to our country. In contrast to non-Indigenous understandings of land as a commodity, land is our 'home'.

The responsibilities that go with our home do not allow us to sell up or move on when it is no longer tenable. The land is our mother, it is steeped in our culture, and we have a responsibility to care for it now and for generations to come. This care in turn sustains our lives – spiritually, physically, socially and culturally – much like the farmer who lives off the land.

National climate change policy development is developing rapidly in Australia.⁴ Despite the Government's expectation that the Indigenous estate will provide economic outcomes from carbon markets,⁵ Indigenous stakeholders have largely been left out of the debate and there is little analysis available on the direct or indirect impacts of climate change on Indigenous peoples in Australia.

However, at the local level, there is a significant amount of discussion and project development by Indigenous stakeholders who are concerned about the impacts of climate change on their communities. We are particularly concerned that Indigenous lands and waters will be a key element in the national policy response to climate change, yet we have not been engaged in the domestic or international policy debates.

1. Overview of key climate change issues for Australia's Indigenous peoples⁷

The International Working Group for Indigenous Affairs stress that 'for Indigenous peoples around the world, climate change brings different kinds of risks and opportunities, threatens cultural survival and undermines Indigenous human rights'.⁶ Climate change, will specifically affect the way Indigenous people exercise and enjoy our human rights at a time when the human rights of all people are being threatened.

3 M Dodson, *Indigenous Protected Areas in Australia*, International Expert Group Meeting on Indigenous Peoples and Protection of the Environment, Khabarovsk, Russian Federation, 27-29 August 2007, pp 2-4.

4 According to Department of Climate Change timeframes, exposure draft legislation for the national emissions trading scheme, the Carbon Pollution Reduction Scheme, will be released in February 2009 with a view to introducing a bill into Parliament in May 2009.

5 Shadow Minister for Indigenous Affairs and Reconciliation, the Hon J Macklin, Shadow Parliamentary Secretary for Northern Australia and Indigenous Affairs, the Hon W Snowdon, *Indigenous economic development*, Australian Labor Party – Election 2007. At: http://www.alp.org.au/download/now/indig_econ_dev_statement.pdf (viewed 15 December 2008).

6 International Working Group for Indigenous Affairs, *Indigenous Affairs, Climate Change and Indigenous Peoples*, 1-2/08, International Secretariat Denmark, ISSN 1024-3283.

In Australia these risks and opportunities will also be diverse, and in some regions are already being experienced.⁷ Problems that Indigenous Australians will encounter include:

- people being forced to leave their lands particularly in coastal areas. Dispossession and a loss of access to traditional lands, waters, and natural resources may be described as cultural genocide; a loss of our ancestral, spiritual, totemic and language connections to lands and associated areas.
- the migration of Indigenous peoples from island and coastal communities and those communities dependent on our inland river systems to relocate to larger islands, mainland Indigenous communities or urban centres.
- no longer being able to care for country and maintain our culture and traditional responsibilities to land and water management. Such a disconnect will result in environmental degradation and adverse impacts on our biodiversity and overall health and well-being.
- in tropical and sub-tropical areas, an increase in vector-borne, water-borne diseases (such as malaria and dengue fever).
- a disruption to food security, including subsistence hunting and gathering livelihoods and biodiversity loss, increase in the need for and the cost of food supply, storage and transportation, and an increase in food-borne diseases.
- the risk of being excluded from the establishment and operation of market mechanisms that are being developed to address environmental problems, for example water trading, carbon markets and biodiversity credit generation.

The issues that Indigenous people in Australia will face are evidenced and exacerbated by climatic changes including:

- the increased number and intensity of cyclones and storms, leading to flash floods
- the rising sea levels and inundation of fresh water supplies by salt water
- coastal erosion and changes to ecosystems, such as mangrove systems
- the bleaching and sustainability of our reefs
- the drying up of water systems that were once never empty
- the frequency and intensity of bushfires and drought and desertification
- the changing migratory patterns of our sea animals and birds
- the dying out of particular wildlife and plant life in our ecosystems and environments.

The impacts mentioned above highlight the importance of Indigenous participation in the development and implementation of responses to climate change, particularly, where responses will be required to address a diverse range of issues, dependent on the region and its climatic features. This includes responses that appropriately respect the link between local culture and tradition and local physical environments. For example, the needs of Indigenous peoples who rely on the river systems of the Murray-Darling Basin will require different responses and have access to different opportunities than those living in the tropical regions of Northern Australia. Map 2 below shows the diversity in climate across Australia.

⁷ See Case Study 1 of this Report on Climate Change and the human rights of the Torres Strait Islanders.

There will also be native title and land rights implications including effects on our rights to:

- manage our lands and waters rich in biodiversity
- protect and secure the ownership and custodial rights to the Indigenous estate
- contribute, as major landholders, to the development of adaptation and mitigation strategies to address climate change
- ensure responses to climate change do not introduce laws and regulations that limit our ongoing use and enjoyment of country.

While there will be devastating impacts for some Indigenous communities that will require intensive support, other communities will be better placed to benefit from the opportunities arising from climate change. Indigenous communities will require Governments support in a number of areas in order to respond to the impacts of climate change. For instance technical and economic support will be required to ensure that the necessary governance structures are in place and infrastructure is available to communities to respond appropriately. Governments will need to give serious consideration to the provision of resources to ensure that this support is available to those Indigenous communities that require it.

As identified by the United Nations Permanent Forum on Indigenous Issues (UNPFII), Governments must work together at all levels with the full participation of Indigenous people on a 'holistic' response to climate change that takes account of not only the ecological dimensions of climate change, but also the social impacts and principles of human rights, equity and environmental justice.

2. The Indigenous Estate – 'our' greatest asset?

Text Box 1: The Indigenous Estate

In February 2005, Senator Amanda Vanstone referred to Indigenous peoples in Australia as being 'land rich and dirt poor'.⁸

While Indigenous people have varying degrees of access and control of up to 20 percent of the Australian continent, much of which is rich in natural resources, we are also the most disadvantaged group in Australia by all social indicators.

At 30 June 2006, the Indigenous estimated resident population of Australia was 517,200 or 2.5 percent of the total population, with the majority of Indigenous people living in major cities, or regional Australia. While 25 percent of the Indigenous population live in remote Australia, the majority of the Indigenous land estate, located in remote areas, is managed by 1,200 discrete Indigenous communities.⁹ Up to 80 percent of adults living in these discrete communities rely on their natural environment for their livelihoods, including through fishing and hunting for foods, but also the use of natural resources and the environment for commercial activity such as arts and crafts, and tourism.

8 Minister for Immigration and Multicultural and Indigenous Affairs, Senator the Hon Amanda Vanstone, Address to National Press Club, 23 February 2005. At: http://www.atsia.gov.au/media/speeches/23_02_2005_pressclub.htm (viewed 31 August 2005).

9 Australian Bureau of Statistics, *Population Distribution, Aboriginal and Torres Strait Islander Australians, 2006*, last updated 15 August 2007. At: <http://www.abs.gov.au/ausstats/abs@.nsf/b06660592430724fca2568b5007b8619/14e7a4a075d53a6cca2569450007e46c!OpenDocument> (viewed 7 October 2008).

Many of our Indigenous communities are comparative to third world countries. However we are not afforded third world status and therefore do not have access to international programs such as those climate change programs facilitated by the United Nations Development Programme (UNDP), specifically developed for building sustainable Indigenous communities in third world countries.

Indigenous Australians have access to varying levels of ownership, control, use and access, or management of approximately 20 percent of the Australian continent. The Minister for Families, Housing, Community Services and Indigenous Affairs, in her Mabo Lecture, reiterated the frustration that we as Indigenous peoples feel about our limited ability to use this significant asset to meaningfully leverage economic, social, and cultural outcomes.¹⁰

Australia has an extremely high biodiversity value. The Indigenous land estate in Australia includes bioregions that are of global conservation significance, with many species found only on our continent and in our marine areas.¹¹

In the context of both national and international interests in the conservation and sustainable management of biodiversity, Indigenous peoples as custodians have a responsibility to ensure the integrity and maintenance of ecosystems on our lands and waters. The Indigenous knowledge around these ecosystems which have high biodiversity value will be integral to the development of adaptation and mitigation climate change strategies.

In the face of the many significant impacts of climate change, more can and should be done to collaborate and include appropriate opportunity for Indigenous knowledge contribution in the design of solutions, not to mention the ongoing management and preservation of biodiverse and ecologically significant areas. Emerging law and policy should not restrict traditional practices or activities in these areas (including National Parks and World Heritage areas). Instead, law and policy should promote these activities and practices along with Indigenous knowledge and understandings where it is culturally appropriate or allowable.

The importance of protecting the Indigenous estate represents a significant challenge for government in developing responses to climate change. Indigenous landholders are severely under resourced and have limited capacity and infrastructure to respond to the challenges they face as a result of human induced climate change.

There is a desperate need for substantial public investment in the capacity of Indigenous people to manage this vast estate. Additionally, there is a considerable need for the Australian Government to commit to the development of a comprehensive policy for Indigenous land and sea management which co-ordinates tenure and other issues concerning the Indigenous estate.

10 Minister for Families, Housing, Community Services and Indigenous Affairs, J Macklin, *Beyond Mabo: Native title and closing the gap*, 2008 Mabo Lecture, James Cook University, Townsville, 21 May 2008. At: http://www.fahcsia.gov.au/Internet/jennymacklin.nsf/content/beyond_mabo_21may08.htm (viewed 1 July 2008).

11 For example, Kakadu National Park in the Northern Territory is a World Heritage site with Ramsar listed Wetlands well known for its spectacular wilderness, nature conservation values, rich diversity of habitats, flora and fauna, and cultural significance. At: <http://www.environment.gov.au/ssd/publications/ssr/164.html> (viewed 27 November 2008). The Wet Tropics World Heritage Listed area in North Queensland is home to more than 50 animal species that are unique to the area. A third of Australia's marsupial species, a quarter of the frogs and reptiles and about 60 percent bat and butterfly species live in the wet tropics. At: https://www.epa.qld.gov.au/parks_and_forests/world_heritage_areas/wet_tropics/ (viewed 27 November 2008).

The government has started to consider the implications for Indigenous lands and waters, identifying areas included in the National Reserve System, such as Indigenous Protected Areas (IPA's), as a potential opportunity for economic development arising from the developing carbon markets.

However, the Indigenous estate is governed by a number of legislative and policy arrangements that will determine the extent to which Indigenous peoples engagement in the climate change debate, and the rights derived from it, can be achieved. These legislative arrangements include:

- the *Native Title Act 1993* (Cth)
- various State and Territory land rights regimes
- the National Reserve System
- Cultural Heritage legislation
- a range of other laws and policies that affect lands, waters and resources including, legislation and policy associated with Australia's Carbon Pollution Reduction Scheme (see below for further discussion).

I have consistently argued that some of these mechanisms have seriously limited Indigenous involvement in development opportunities. However, if Government are serious about Indigenous peoples leveraging economic benefits from the Indigenous estate, they must fully acknowledge that traditional practices, and caring for country can be of particular value in the new world of responding to climate change. It is only once this is realised that there will be scope for the protection and advancement of Indigenous interests.

As a first step in identifying climate change opportunities and issues that may arise on the Indigenous estate, State Governments will need to work with Indigenous groups to resolve outstanding tenure issues.

The States can facilitate this process by providing a full inventory that maps the various tenures (ie. Aboriginal freehold, national parks etc), where native title rights and interests have been determined, the capacity for engagement in carbon markets, and identifies lands where tenure resolution is required. This information will need to be available to Indigenous peoples and their governing organisations such as Prescribed Bodies Corporate and Indigenous Land Trusts.

2.1 Native Title

The *Native Title Act 1993* (Cth) (Native Title Act), provides a degree of protection for native title rights and interests held by Indigenous peoples:

Native title rights and interests in land can be an important foundation for Indigenous economic and social development. Economic returns can flow from Indigenous people developing the land and the resources contained on the land, from companies seeking access to the land and resources for development purposes, and from the cultural assets of the group and their unique relationship to the land.¹²

The ability of Indigenous people to take the greatest advantage of the native title system for our economic and commercial benefit – to leverage the system – is contingent on many factors that are often outside our control.

¹² Aboriginal and Torres Strait Islander Social Justice Commissioner, *Promoting Economic and Social Development through Native Title*, Land, Rights, Laws: Issues of Native Title, Vol 2, Issues Paper No. 28, p 7, Native Title Research Unit, Australian Institute of Aboriginal and Torres Strait Islander Studies, August 2004.

The extent of recognition and protection, as confirmed by the High Court in *Western Australia v Ward*,¹³ is restricted by the ability for native title applicants to prove a continued system of traditional law and custom, and in considering extinguishment, an examination of the intention of any conflicting legislation or any inconsistency in the nature of legal interests conferred by statute.¹⁴

The potential for native title to achieve real outcomes for Indigenous people is also limited by a general lack of recognition of commercial rights. Native title is subject to various caveats in terms of how rights and interests can be exercised on the lands and waters and whether native title rights and interests will be protected from new development and activities by negotiations with governments and other stakeholders.

As many people are aware, the resolution of native title claims can take years. This puts serious limitations on the enterprise options for the land. In many instances, native title rights and interests have been granted for non-commercial use only. This has significantly restricted Indigenous people's ability to leverage native title rights to achieve economic outcomes.

In the context of climate change and the potential to leverage economic development opportunities from carbon markets, clarification is required as to the legal recognition of carbon rights in trees on Indigenous lands. As noted by Gerrard:

The nature of these carbon rights varies across jurisdictions. There is inconsistency in relation to the land on which these carbon rights may be created, whether these carbon rights create an interest in land, and whether harvesting rights are separate from sequestration rights. As a result, the interaction between carbon rights in trees and other legal interests, including native title is complex. New laws, regulations and markets present the possibility of a further decrease of Indigenous peoples' rights and interests through extinguishment or suspension of native title and restricting rights in relation to access and use of natural and biological resources.¹⁵

In order to maximise the benefits and opportunities available to Indigenous people from climate change, Government agencies with responsibility for native title will need to give serious consideration to the current operation of the native title system. This will include an assessment of the legislative arrangements.

(a) Agreement Making

Native title agreement making, through Indigenous Land Use Agreements (ILUAs), provides an opportunity for native title holders to bring to the negotiation table their agenda for economic and social development. These agreements may also include issues about use and development on their lands, economic and employment outcomes and other outcomes such as the protection of cultural heritage.

13 *State of Western Australia v Ward on behalf of the Mirriuwung Gajerrong* [2002] HCA 28 (8 August 2002).

14 E Gerrard, Impacts and Opportunities of Climate Change: Indigenous Participation in Environment Markets, *Land, Rights, Laws: Issues of Native Title*, Native Title Research Unit, Volume 3, Issue Paper No. 13, April 2008, citing *State of Western Australia v Ward on behalf of the Mirriuwung Gajerrong* [2002] HCA 28 at [78]-[80] per Gleeson CJ, Gaudron, Gummow and Hayne JJ (8 August 2002).

15 E Gerrard, Impacts and Opportunities of Climate Change: Indigenous Participation in Environment Markets, *Land, Rights, Laws: Issues of Native Title*, Native Title Research Unit, Volume 3, Issue Paper No. 13, April 2008 p 5.

Through this process governments come to understand and respond to the social and cultural context for the development objectives of the group. Native title agreements can then be tailored to the development needs of the claimant group.¹⁶

For example, template ILUAs such as the Central Queensland Agreement template,¹⁷ may provide a framework for future agreements and engagement around environmental and carbon markets. Agreements such as these may be a useful tool where industry and governments will be considering carbon offset options on Indigenous lands, in providing non-native title outcomes.

The outcomes of agreements are in large part determined by the attitude of governments and other parties to the negotiations. In some areas, governments continue to present significant barriers to the realisation of indigenous peoples' advancement, particularly through the oppositional approach that is taken to the recognition of Indigenous peoples' rights to land through the formal native title system. While States and Territories have started to engage more proactively in their legislative and policy endeavours to improve the current system, there is still room for improvement.

As I have outlined in previous Native Title Reports, in order to achieve successful and sustainable agreements, the process and framework for the negotiation is crucial. For example:

- the necessary resources required to ensure the full and effective participation of native title holders must be made available
- Indigenous decision-making processes must be incorporated into the agreement-making process including whether the agreement is private or available for public access and what benefits are derived from the agreement
- native title holders must have access to information they require to make informed decisions
- a process for short-term and long-term implementation which clearly outlines the roles and responsibilities (including a commitment of resources) of each of the parties must be included in the agreement.

(b) The capacity of the native title system to deliver

The Attorney-General has announced his desire to encourage all governments at the Native Title Ministers Meeting in July, to work together through 'co-operative federalism' to find a new approach to resolving native title and land and water issues.

As is widely recognised, Native Title Representative Bodies and Prescribed Bodies Corporate are severely under-resourced. Increased financial and training support will be required to ensure the effectiveness of the native title system. Effectiveness does not simply refer to the ability to settle outstanding claims but also in the sense of supporting native title holders beyond settlement to implement and grow opportunities.

16 Aboriginal and Torres Strait Islander Social Justice Commissioner, *Promoting Economic and Social Development through Native Title*, Land, Rights, Laws: Issues of Native Title, Vol 2, Issues Paper No. 28, p 7, Native Title Research Unit, Australian Institute of Aboriginal and Torres Strait Islander Studies, August 2004.

17 Aboriginal and Torres Strait Islander Social Justice Commissioner, *Native Title Report 2007*, Sydney, pp 233-240. At: http://www.humanrights.gov.au/social_justice/nt_report/ntreport07/chapter11.html (viewed 27 October 2008).

Resources are needed, firstly, to meet the priorities of Indigenous peoples on native title lands to maintain and conserve the biodiversity of their country. And secondly, to build capacity for Native Title Representative Bodies, Land Councils, Indigenous community organisations (eg. PBCs and Land Trusts) and Indigenous businesses to develop economic opportunities (such as carbon credit generation and trade), that meet the needs of their communities.¹⁸

As discussed by the previous Aboriginal and Torres Strait Islander Social Justice Commissioner:

...Native title agreements provide an opportunity for the parties to develop a framework to enable the traditional owner group to build the capacities and the institutions necessary to achieve their development goals.¹⁹

He argued that implementing capacity development through native title agreements requires a significant change of approach to native title agreement making, not just by government but also by traditional owner groups and their representatives. Framework agreements should acknowledge that capacity development is:

- a long-term process requiring the investment of consistent and adequate resources. (The benefit of a financial commitment in capacity development is a community which is ultimately self-supporting and self-governing)
- an ongoing process during which communities can learn from their experiences and build on their changing abilities
- a staged process, determined by the growing capacity and skill base of the group.²⁰

Government departments should consider native title when developing Indigenous focused policies and projects. The native title system and land rights regimes should complement, and be complemented by other relevant areas of policy and legislation to ensure native title rights and interests are fully effective.

A major issue in trying to use native title land as a basis for enterprise is the possible suspension and effective regulation of rights and interests through the future acts regime. This means that even if claimants are successful in a native title claim, their rights and interests can be easily and lawfully impacted upon by activities conducted in accordance with the future act process.

This highlights the need to ensure the inclusion of native title and land rights considerations in the formulation of climate change policy and legislation as a matter of urgency. If clearly foreseeable issues are addressed up front, at the developmental stages, the risk of undermining aspects of climate change policy, emissions trading regulation and other responses where Indigenous engagement will be crucial, may be minimised down the track. Addressing issues in the formation stages also reduces the risk of inadvertently creating unfavourable legal and policy precedents.

18 Australian Labor Party, 'Federal Labor to create up to 300 Rangers as part of Indigenous Economic Development Strategy', (Media Release, 5 October 2007).

19 Aboriginal and Torres Strait Islander Social Justice Commissioner, *Promoting Economic and Social Development through Native Title*, Land, Rights, Laws: Issues of Native Title, Vol 2, Issues Paper No. 28, p 6, Native Title Research Unit, Australian Institute of Aboriginal and Torres Strait Islander Studies, August 2004.

20 Aboriginal and Torres Strait Islander Social Justice Commissioner, *Promoting Economic and Social Development through Native Title*, Land, Rights, Laws: Issues of Native Title, Vol 2, Issues Paper No. 28, p 6, Native Title Research Unit, Australian Institute of Aboriginal and Torres Strait Islander Studies, August 2004.

Native title has been considered a hurdle to achieving economic development. However, with the Australian Government encouraging a more flexible approach towards native title,²¹ there is the potential for Indigenous people and governments to develop a climate change policy that achieves real outcomes and provides better protection of (exclusive and non-exclusive) native title rights and interests for Indigenous people and their communities.

Further, in addition to the base level legal requirements under existing legislation, best practice principles of engagement with Indigenous peoples and their communities should be developed to guide information and technology sharing and access to the Indigenous estate for climate change related projects and initiatives. Further discussion of best practice principles is returned to shortly.

2.2 Land Rights

The long struggle for land rights in Australia has meant that Indigenous people now have a degree of ownership, control or management of approximately 20 percent of Australian lands and waters. However, not only are land rights and native title different legal regimes and different in their respective implementation, they can interfere with Indigenous rights and interests in their interaction with one another's areas of policy. In addition, most States and Territories have also developed alternative land regimes, which in some cases are inconsistent with national approaches. For example, those Indigenous groups in more remote regions, such as those in Cape York, Queensland who have had Aboriginal freehold lands returned to them under state land rights regimes may be in a better position to achieve their cultural, social, and economic aspirations than even those who have been successful in a native title process.

As a general principle, of all lands either owned or controlled by Indigenous peoples across Australia, those Indigenous communities who have had inalienable or alienable freehold lands returned to them under the various land rights regimes are best placed to engage in economic ventures linked to carbon and environmental markets. However, the full realisation of potential carbon sequestration (storage or absorption of carbon dioxide in trees, plants, wetlands and soil etc), will depend to some extent on the strength of the Governments commitment to recognise the right of, and to provide economic opportunities for Indigenous people in the carbon market.

For example, land handed back to Aboriginal people under land rights regimes that are National Park lands, has not yet been identified by the Government as an option for carbon offsets. For Indigenous peoples, particularly on those national parks where joint management is in place, this could provide an opportunity for Indigenous people who own or jointly manage country to be recognised for our previous, current and future contributions to conservation on our lands. It may also provide the basis for an additional income stream for all stakeholders involved.

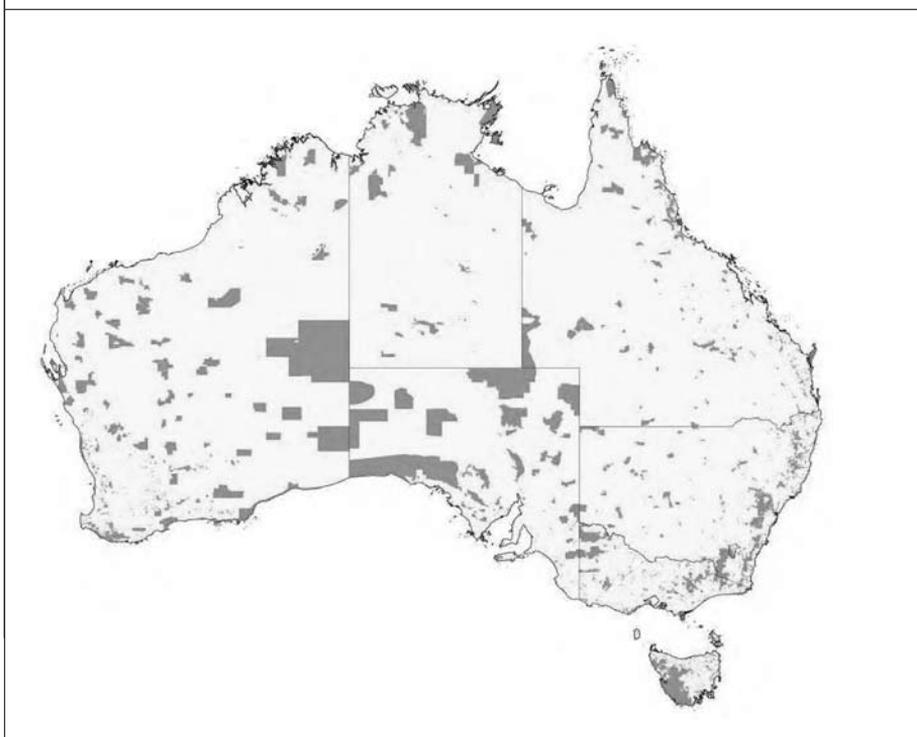
21 Attorney-General's Department, *Annual Report 2007-2008 Overview*. At http://www.ag.gov.au/www/agd/agd.nsf/Page/PublicationsAnnual_ReportsAnnual_Report_2007Overview#review (viewed 1 December 2008).

2.3 The National Reserve System

The National Reserve System is a nation-wide network of approximately 9,000 protected areas, which currently covers more than 88 million hectares (11 percent) of the country. Aimed at conserving Australia's unique landscapes, plants and animals, these areas include:

- National Parks
- Conservation areas on private lands
- Indigenous Protected Areas
- Other reserves.²²

Map 1: Australian National Reserve System accounts for 11.5% of Australian's land area (88,436,811 ha) and has 8667 protected areas²³



22 M Dunlop and P Brown, *Implications of Climate Change for Australia's National Reserve System: A preliminary assessment*, Department of the Environment, Water, Heritage and the Arts Commonwealth of Australia (2008), p 9. At: <http://www.climatechange.gov.au/impacts/publications/nrs-report.html> (viewed 16 December 2008).

23 M Dunlop and P Brown, *Implications of Climate Change for Australia's National Reserve System: A preliminary assessment*, Department of the Environment, Water, Heritage and the Arts Commonwealth of Australia (2008), p 20. At: <http://www.climatechange.gov.au/impacts/publications/nrs-report.html> (viewed 16 December 2008).

Text Box 2: The National Reserve System has its origins in the Rio Earth Summit of 1992

Australia played an active role in developing the Convention on Biological Diversity – the groundbreaking international treaty which links sustainable economic development with the preservation of ecosystems, species and genetic resources. When the Rio Earth summit adopted the Convention in 1992 Australia was one of the first of 167 nations to sign and to ratify.

On signing the Convention, Australia agreed to establish a National Strategy for the Conservation of Australia's Biodiversity and a system of protected areas.

To carry out its promise, the Australian Government began working with the states and territories, who have constitutional responsibility for land management. In a historic step forward, all governments agreed to build a network of land and marine protected areas.

The resulting land-based network of protected areas is called the National Reserve System. A separate program exists for marine protected areas.

By 1996, the National Reserve System consisted of more than 5,600 properties covering almost 60 million hectares.

Recognising that some of Australia's most valuable and rare environments are on land owned by Indigenous communities, the Australian Government also began working on an exciting new concept which would later become Indigenous Protected Areas.²⁴

The Government has identified Australia's Indigenous Protected Areas²⁵ (IPAs) and other Indigenous owned or managed lands and waters as a potential biodiversity conservation and carbon sequestration investment opportunity. Sixteen percent of Australia is identified as important 'biodiversity hotspots' for carbon sequestration and biodiversity protection, with an increasing economic value in environmental and carbon related markets.²⁶

Indigenous peoples are actively engaged in providing environmental management services in coastal management and security, weed management, and feral animal control. Existing programs such as the Caring for Country Initiative, the Working on Country Program,²⁷ and new national park joint management arrangements in Cape York,²⁸ which aim to build on Indigenous knowledge of protecting and managing land and sea country provides funding for Indigenous people to be trained and employed as Rangers to deliver environmental outcomes. There is significant scope to build

24 Department of the Environment, Water, Heritage and the Arts, *History of the National Reserve System*, Information Sheet. At: www.environment.gov.au/parks/nrs/about/history.html.

25 The World Conservation Union (IUCN) defines a protected area as 'an area of land or sea specially dedicated to the protection and maintenance of biodiversity and associated cultural resources and management through legal and/or other effective means'. In Australia, they include areas of land also known as national parks, nature reserves and marine parks and traditional Indigenous owners enter into agreements with the Australian Government to promote biodiversity and cultural resource conservation. Department of the Environment, Water, Heritage and the Arts, *Indigenous Protected Area – Background*. At: <http://www.environment.gov.au/indigenous/ipa/background.html> (viewed 6 September 2008).

26 Australian Labor Party, 'Federal Labor to create up to 300 Rangers as part of Indigenous Economic Development Strategy', (Media Release, 5 October 2007).

27 Working on Country is a government initiated program that contracts Indigenous people to provide environmental services that helps maintain, restore, protect and manage Australia's environment. Department of the Environment, Water, Heritage and the Arts, *Working on Country*. At: <http://www.environment.gov.au/indigenous/workingoncountry/index.html> (viewed 25 November 2008).

28 The *Cape York Peninsula Heritage Act 2007* provides for the joint management of national parks.

and develop these programs further through emerging climate change responses, such as emissions offsetting and carbon trading.²⁹

Activities such as fire and feral animal management regimes, as well as potential for carbon sequestration and offset arrangements may be possible for Indigenous people on their lands under the National Reserve System. However, the ability for Indigenous people to access such opportunities is dependent on Government ensuring that, in developing climate change policy, National Reserve lands (particularly those that are Indigenous owned or co-managed, ie. National Parks) are open to these activities and are included in the National Carbon Pollution Reduction Scheme. The Message Stick Carbon Group stressed that:

Clarity should be provided around the governments stand on avoided deforestation being discussed in the context of the developing countries for the post-Kyoto mechanism. This must also include forested lands owned by Indigenous Australians locked away at present from economic activity in the form of State Forests, National Parks etc.³⁰

The Government has committed to increase funding to a total of \$50 million over five years to improve and expand the Indigenous Protected Areas Program within the national reserve system. As discussed above, these lands have been identified as integral to the development of climate change responses, and opportunities for economic outcomes for Indigenous communities. While \$50 million is a positive start, it will not be sufficient to meet the needs of Indigenous peoples nationally to design, develop and implement long-term sustainable projects.

For example, the West Arnhem Land Fire Abatement project took up to ten years to develop.³¹ If Indigenous involvement in emissions' trading is genuinely intended by governments, then greater assistance will be needed to ensure projects meet the standards prescribed by emissions trading schemes.³² These standards involve intensive verification and registration processes, as well as ongoing reporting obligations. Funding and other resources must enable Indigenous people to meet these and other preliminary market access requirements if meaningful involvement in emerging markets is going to be realised.

2.4 Cultural Heritage

Everything about Aboriginal society is inextricably interwoven with, and connected to the land. None of it is vacant or empty, it is all interconnected. You have to understand this and our place in that land and the places on that land. Culture is the land, the land and spirituality of Aboriginal people, our cultural beliefs and our reason for existence is the land.³³

29 P Garrett, Minister for the Environment, Heritage and the Arts, Correspondence to T Calma, Aboriginal and Torres Strait Islander Social Justice Commissioner, Human Rights and Equal Opportunity Commission, 29 August 2008.

30 Message Stick Carbon Group, *Indigenous Economic Engagement: Response to Emissions Trading Scheme Discussion Paper*, (2008). At: [http://www.garnautreview.org.au/CA25734E0016A131/WebObj/D0852530ETSSubmission-MessageStickCarbonGroup/\\$File/D08%2052530%20%20ETS%20Submission%20-%20Message%20Stick%20Carbon%20Group.pdf](http://www.garnautreview.org.au/CA25734E0016A131/WebObj/D0852530ETSSubmission-MessageStickCarbonGroup/$File/D08%2052530%20%20ETS%20Submission%20-%20Message%20Stick%20Carbon%20Group.pdf) (viewed 16 December 2008).

31 Tropical Savannas Cooperative Research Centre, Eureka win for Arnhem Land Fire Project, *Savanna Links*, Issue 34, 2007. At: http://savanna.cdu.edu.au/publications/savanna_links_issue_34.html.

32 Emissions trading schemes may include Kyoto and Kyoto compliant schemes such as Australia's Carbon Pollution Reduction Scheme.

33 M Dodson, *Indigenous Protected Areas in Australia*, International Expert Group Meeting on Indigenous Peoples and Protection of the Environment, Khabarovsk, Russian Federation, 27-29 August 2007, p 4.

The International Union for Conservation of Nature (IUCN) anticipates that changes to land cover and biodiversity caused by climate change, could force Indigenous people to 'alter their traditional ecosystem management systems' and, in the extreme, 'eventually lead to a loss of their traditional habitats and along with it their cultural heritage'.³⁴

Significant work is required to effectively engage Indigenous people in climate change law and policy in Australia. Through the introduction of legislation such as the *Native Title Act 1993* (Cth), and Cultural Heritage legislation, the Australian Government is achieving a degree of recognition and respect for the unique rights that Indigenous peoples have to our lands. However, these laws provide limited recognition and are not sufficient or effective.

The importance of culture and its relevance to Indigenous people's relationship to our lands [and waters] is something that government and non-Indigenous people have a hard time understanding. This is evidenced by the fact that governments continue to develop Indigenous land policy in isolation to other social and economic areas of policy, including native title and cultural heritage legislation.

For example, Australia has the *Aboriginal and Torres Strait Islander Heritage Protection Act 1984*, a legislation enacted by the Commonwealth Government. The purpose of this Act is to preserve and protect places and objects of cultural significance to Aboriginal and Torres Strait Islander peoples. Currently the legislation provides this protection at the national level for all states but delegates its powers to the States and Territories.³⁵ Additionally, each State and Territory has their own cultural heritage legislation. I am concerned that this approach leads to inconsistent implementation, and outcomes are dependent on the incumbent state or territory government. For example, monitoring and assessment of the interplay between State and Federal regimes and its delivery of protection for Indigenous cultural heritage is necessary to ensure the outcomes are being achieved.

Additionally, there are significant differences between State and Territory heritage protection laws and there are problems in how well each of them actually protects Indigenous cultural heritage. In particular, there is a stark difference in the treatment of non-Indigenous heritage compared to Indigenous cultural heritage. This includes provisions relating to liability for damage or destruction of Indigenous cultural heritage which must also be consistent with that applied to the protection of non-Indigenous cultural heritage.³⁶

While climate change may provide some opportunities for Indigenous peoples to increase their current land management responsibilities, especially in areas of high cultural heritage and biodiversity value, Indigenous cultural heritage may be threatened in other areas. The forced migration of peoples from their lands may mean fewer people remaining on country to respond to the environmental threats through active land management.

34 M Macchi, *Indigenous and Traditional People and Climate Change*, IUCN Issues Paper, (2008). At: http://cmsdata.iucn.org/downloads/indigenous_peoples_climate_change.pdf as cited by J Altman and K Jordan, *Impacts of Climate Change on Indigenous Australians: Submission to the Garnaut Review* (2008), pp 4-5.

35 *Aboriginal and Torres Strait Islander Heritage Protection Act 1984*, part IIA.

36 For example, the *Heritage Act 1995* (Vic) protects non-indigenous cultural heritage – it contains 'strict liability' penalties for persons damaging or despoiling 'cultural heritage'. Further, the *Heritage Act* mandates planning scheme amendments to protect places listed on the Heritage Register. Aboriginal Heritage areas are not necessarily included in planning schemes and it is much more difficult to prove liability for damaging Indigenous heritage. Unlike the provisions for protecting non-Indigenous heritage (under the *Heritage Act 1995*), the *intention* to harm Aboriginal cultural heritage has to be proven under the *Aboriginal Heritage Act 2006*.

Federal policies and programs including the Indigenous Heritage Program and Indigenous Protected Areas³⁷ are contributing to increasing the extent of recognition and land management activity on country. The Working on Country program³⁸ aims to achieve the maintenance, restoration, and protection of Australia's land, sea and heritage environment by contracting Indigenous people to provide the necessary environmental services.

Programs such as this benefit the Australian community, and at the local level, employment opportunities which allow the Indigenous custodians of the land to continue their cultural responsibilities also advance the livelihoods of Indigenous people. These programs may also provide a foundation for the recognition and participation of Indigenous peoples in carbon and environmental markets which benefit the Australian community.

2.5 Diverse Climatic Regions

The diversity of climate across the Indigenous estate will also require diverse approaches to climate change that consider not only the economic opportunities, but a full assessment of the potential impacts and responses required.

For example, the top end and much of the east coast of the country is tropical or subtropical coastal areas, while the majority of the country inland and to the west coast is grassland or desert. These areas provide the homelands of Indigenous peoples. Both regions will require different, but equally important responses to climate change. Indigenous knowledge of the macro and micro diversity in these areas is of important value in formulating solutions and responses to climate change. As stressed by Gerrard:

Indigenous peoples have a 'special interest' in climate change issues, not only because through their physical and spiritual relationships with land, water and associated ecosystems, they are particularly vulnerable to climate change; but also because they have a specialised ecological and traditional knowledge relevant to finding the 'best fit' solutions.³⁹

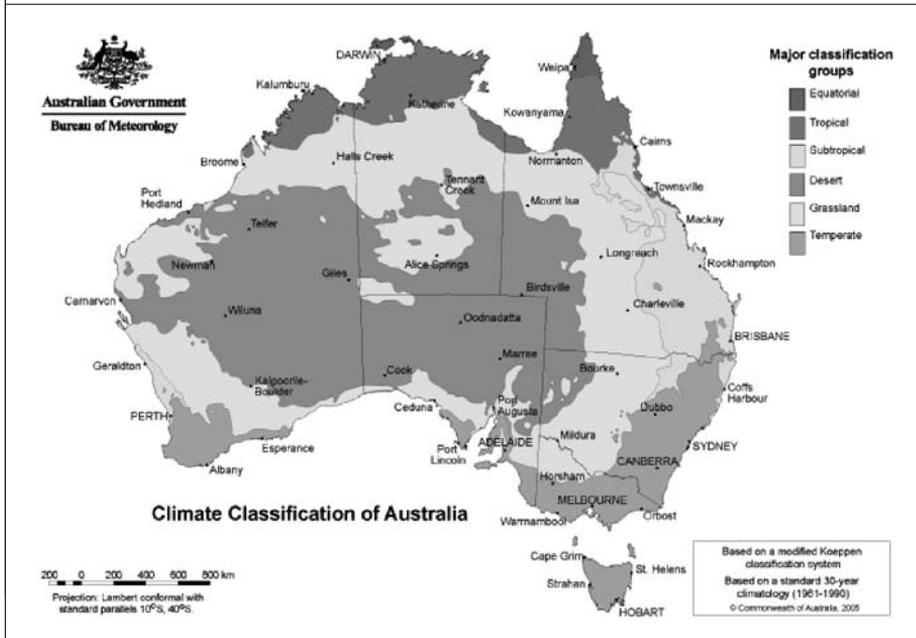
Appendix 6 provides a summary of the projected climatic impacts on various regions, and the potential impacts on Indigenous communities.

37 The Indigenous Protected Areas element of the Caring for our Country initiative is one way Indigenous Australians are being supported to meet their cultural responsibility to care for their country and to pass on their knowledge about the land and its resources to future generations. Through Indigenous Protected Areas, the Government supports Indigenous communities to manage their land for conservation – in line with international guidelines – so its plants, animals and cultural sites are protected for the benefit of all Australians. Department of Environment, Water, Heritage and the Arts, *Indigenous Protected Areas*. At: <http://www.environment.gov.au/indigenous/ipa/index.html> (viewed 2 December 2008).

38 Working on Country is a government initiated program that contracts Indigenous people to provide environmental services that helps maintain, restore, protect and manage Australia's environment. Department of the Environment, Water, Heritage and the Arts, *Working on Country*. At <http://www.environment.gov.au/indigenous/workingoncountry/index.html> (viewed 25 November 2008).

39 E Gerrard, 'Climate Change and Human Rights: Issues and Opportunities for Indigenous Peoples', *University of New South Wales Law Journal Forum*, (2008) 14(2), p 67.

Map 2: Australian climate zones – major classification groups⁴⁰



3. The climate change challenge

A number of challenges arising from climate change are critical to the lives of Indigenous people. These challenges will require specific strategies to reduce the impacts on Indigenous people. These challenges, if given serious consideration, can be addressed. However, in order to turn these challenges into opportunities there first needs to be understanding and recognition of the extent of the possible threats. Some of the challenges presented by climate change include:

- access to information
- pressures on Indigenous lands and waters – environmentally, culturally, socially and economically
- health and well-being of Indigenous people – psychologically, physically
- protection of Indigenous knowledges
- effects of current and future responses to climate change (policy and regulation) on existing legal rights and interests.

3.1 Access to information

With regard to the various reports published on climate change impacts and responses, much of the scientific and economic modelling has been developed by technicians with specific expertise in the area. This is due to the complexity of climate change.

The most important issue for Indigenous people to adequately address the challenges arising from climate change is the need to understand what climate change is and:

⁴⁰ This map was obtained from http://www.bom.gov.au/cgi-bin/climate/cgi_bin_scripts/clim_classification.cgi (viewed 18 September 2008). Identification no. Product ID code : IDCJCM0001.

- how it will affect our access and rights to our lands and waters
- how it will impact our environment
- what is carbon and what are the threats and opportunities for us arising from this new thing everyone is talking about.

We must be fully engaged as equal stakeholders. We must also be fully apprised of the benefits and the costs resulting from legislative and policy developments, or negotiated agreements. This requires adequate and appropriate consultation and access to information and advice that is understandable and accessible for communities and affected peoples.

There is currently no mechanism or communication strategy for this to occur. This is a critical oversight and a major concern for Indigenous peoples.

In my *Native Title Report 2006*,⁴¹ I presented the results of a national survey I conducted on land, sea and economic development. The survey results demonstrated that the majority of traditional owners did not have a sufficient understanding of land agreements. This raises questions about our capacity to effectively participate in negotiations and consequently may limit our ability to leverage opportunities from our lands.

The survey also highlighted the need for an information campaign to improve understanding of land regimes and the funding and support programs available to assist indigenous people in pursuing economic and commercial initiatives. Information is power and information is crucial for Indigenous participation in emerging carbon markets and to ensure that decisions made by Indigenous land holders are made with their free, prior, and *informed* consent. A lack of information will limit our capacity to effectively participate in this important area of policy and opportunity.

An urgent information campaign is required that includes information about:

- Commonwealth and State policies related to climate change and how Indigenous peoples' rights and other fundamental human rights will be affected by those policies
- how climate change policies will interact with and be relevant to native title, land rights, and cultural heritage legislation
- how climate change policies will interact with and be relevant to lands included under the National Reserve System
- how climate change policy will interact with and be relevant to the Indigenous Economic Development Strategy
- what funding and support programs will be available to facilitate Indigenous participation in climate change policy development and opportunities
- what other support (corporate and/or philanthropic) is available.

The importance and urgency of this fundamental step cannot be over emphasised.

In order to ensure that policies are appropriately targeted to achieve the desired outcomes, the Government will require reliable information about traditional owner priorities for land. In the same way, traditional owners require information about the Government's policies before they can make informed decisions about land and future social, cultural, and economic opportunities relevant to climate change. This

41 Aboriginal and Torres Strait Islander Social Justice Commissioner, *Native Title Report 2006*, Human Rights and Equal Opportunity Commission, Sydney. At: http://www.humanrights.gov.au/social_justice/nt_report/ntreport06/index.html (viewed 15 October 2008).

will mean the full participation of and effective consultation with Indigenous people on this subject.

3.2 Pressures on Indigenous lands and waters

(a) Interaction between legislation and policy areas

In order to adequately address the impacts of climate change and maximise the opportunities available to Indigenous peoples in Australia, governments will be required to work together to ensure that policy and legislative arrangements are conducive to achieving real outcomes.

A major barrier to successful outcomes for Indigenous peoples has been the inconsistency of approach between federal and state government policy and the lack of cooperation and compatibility between legislative arrangements.

The Declaration on the Rights of Indigenous Peoples' affirms the right of Indigenous people to participate in decision-making in matters that affect their rights. Governments are also urged to consult and cooperate in good faith with Indigenous people to obtain our free, prior and informed consent before adopting and implementing legislative or administrative measures that affect us.⁴²

As a minimum, it will be fundamental for Federal Government Departments including the Department of Environment, Water, Heritage and the Arts, the Department of Climate Change, the Department of Families, Housing, Community Services and Indigenous Affairs, the Attorney-General's Department and others including the Department of Health, to work together with the full engagement and participation of Indigenous people in the development of policies both domestically and internationally, concerning climate change from the outset.

The Department of Families, Housing, Community Services and Indigenous Affairs and the Attorney-General's Department have a significant role to play in facilitating a consistent, innovative approach to Indigenous participation in climate change policy. This is will be particularly important in areas where, for example, tenure reform will be required to achieve key opportunities from carbon markets on Indigenous lands.

(b) International and domestic offset investment from transnational corporations and governments

Australia is at an environmental advantage in our ability to leverage carbon offset opportunities from our extensive forest and natural vegetation cover. It would be in Australia's interest to be able to offset emissions from the stationary energy sector with offsets in the agriculture and forestry land use sectors. While issues of measurement are significant, there is a window of opportunity in the early stages of an Emissions Trading Scheme to allow offsets.⁴³

To not have forestry offsets is to miss the opportunity for massive abatement, while also missing the opportunity for economic opportunities in remote and regional Australia for Indigenous Australians. This would be a sizable missed opportunity.⁴⁴

42 *The Declaration on the Rights of Indigenous Peoples*, Articles 18 & 19.

43 Message Stick Carbon Group, *Indigenous Economic Engagement: Response to Emissions Trading Scheme Discussion Paper* (2008). At: [http://www.garnautreview.org.au/CA25734E0016A131/WebObj/D0852530ETSSubmission-MessageStickCarbonGroup/\\$File/D08%2052530%20%20ETS%20Submission%20-%20Message%20Stick%20Carbon%20Group.pdf](http://www.garnautreview.org.au/CA25734E0016A131/WebObj/D0852530ETSSubmission-MessageStickCarbonGroup/$File/D08%2052530%20%20ETS%20Submission%20-%20Message%20Stick%20Carbon%20Group.pdf) (viewed 16 December 2008).

44 Message Stick Carbon Group, *Indigenous Economic Engagement: Response to Emissions Trading Scheme Discussion Paper* (2008). At: [http://www.garnautreview.org.au/CA25734E0016A131/WebObj/D0852530ETSSubmission-MessageStickCarbonGroup/\\$File/D08%2052530%20%20ETS%20Submission%20-%20Message%20Stick%20Carbon%20Group.pdf](http://www.garnautreview.org.au/CA25734E0016A131/WebObj/D0852530ETSSubmission-MessageStickCarbonGroup/$File/D08%2052530%20%20ETS%20Submission%20-%20Message%20Stick%20Carbon%20Group.pdf) (viewed 16 December 2008).

As discussed in the previous chapter, Australia has responsibilities under the Kyoto Protocol. As a party to the Protocol, the Australian Government are currently developing the national emissions trading scheme, the Carbon Pollution Reduction Scheme,⁴⁵ which regulates the generation and trade of carbon credits.

The Kyoto Protocol includes mechanisms to assist countries to meet their targets and responsibilities. These mechanisms are called ‘flexibility mechanisms’ and they enable parties to the Kyoto Protocol to generate and trade permits or ‘credits’ on emissions trading markets. The flexibility mechanisms are:

- Emissions trading – known as ‘the carbon market’
- The clean development mechanism (“CDM”)
- Joint implementation (JI).⁴⁶

The CDM involves investment in sustainable development projects that reduce emissions in developing countries, while the joint implementation mechanism (JI) enables industrialised countries to carry out emissions reduction or sequestration projects with other developed countries that have ratified the Kyoto Protocol.⁴⁷

It is unfortunate that Australia’s proposed Carbon Pollution Reduction Scheme, does not include a domestic mechanism similar to the CDM. A similar domestic initiative could promote technology and knowledge transfer, with an end goal of sustainability (emissions reduction) and could provide incentives for projects in less developed or low-economic communities, including remote Indigenous communities.

The joint implementation strategy will only be available for developed countries to enter agreements between other developed countries.⁴⁸ As developing countries have not yet been allocated reduction targets under the Kyoto Protocol this mechanism will not be available to developing countries.

Allowing for JI projects in Australia under the Carbon Pollution Reduction Scheme will open opportunities for foreign companies/persons to generate ‘carbon credits’ to be used or traded under the Kyoto Protocol.

Projects initiated under the JI mechanism will have implications for Indigenous peoples in Australia and in other developed nations. This is particularly in relation to the participation of Indigenous peoples in negotiations under this mechanism. The JI mechanism under the Kyoto Protocol provides that projects are only required to have the approval of the host Party, and participants have to be authorised to participate by a Party involved in the project.⁴⁹ In Australia, this would mean that the Federal Government authorises agreements for offset investment opportunities.

As I reported in my *Native Title Report 2007*, traditional owners in western Arnhem Land entered a voluntary agreement with a liquefied gas company in Darwin to offset the company’s greenhouse gas emissions.

Australia is already open to projects or project investment through offsets for voluntary markets.

45 Australian Government, Department of Climate Change, *Carbon Pollution Reduction Scheme, Green Paper, Summary Report*, July 2008. At: <http://www.climatechange.gov.au/greenpaper/summary/summary-report.html> (viewed 29 August 2008).

46 United Nations Framework Convention on Climate Change, *Kyoto Protocol*. At: http://unfccc.int/kyoto_protocol/items/2830.php (viewed 5 August 2008).

47 United Nations Framework Convention on Climate Change, *The Mechanisms under the Kyoto Protocol: Emissions Trading, the Clean Development Mechanism and Joint Implementation*. At: http://unfccc.int/kyoto_protocol/mechanisms/items/1673.php (viewed 5 August 2008).

48 United Nations Framework Convention on Climate Change, *Joint Implementation*. At: http://unfccc.int/kyoto_protocol/mechanisms/joint_implementation/items/1674txt/php (viewed 8 October 2008).

49 United Nations Framework Convention on Climate Change, *Joint Implementation*. At: http://unfccc.int/kyoto_protocol/mechanisms/joint_implementation/items/1674txt/php (viewed 8 October 2008).

However, current legislative arrangements in Australia, including native title, land rights, and cultural heritage, are unlikely to provide adequate protection or provision for Indigenous rights and interests in Kyoto projects or in domestic carbon trading arrangements. In the native title context, projects proposed on native title lands and waters will be considered in light of the future act regime and many projects are unlikely to attract the right to negotiate. Without more direct access points to emerging markets, inadequate mechanisms to bring all parties to the table further undermine our ability to negotiate full and equitable access to new economic opportunities.

Text Box 3: Western Arnhem Land Fire Abatement (WALFA)

The WALFA project mitigates wildfire by reintroducing traditional Indigenous fire management regimes, resulting in reduced greenhouse gas emissions.

The project aims to generate opportunities for Indigenous communities to engage in culture based economies and provides economic, cultural, social, and environmental benefits for Indigenous people and the wider Australian community, and creates an offset for the industry partner. Due to the voluntary nature of this agreement, it did not require the approval of the host party, the Government.⁵⁰

While carbon offset agreements have been negotiated with Indigenous groups in Australia, there is an urgent need for clear principles of best practice and rules to be developed around future negotiations.

The Australian Government has committed to facilitating participation of Indigenous people in carbon markets.⁵¹ A legal framework is needed to create certainty and clarity around this participation. Such a framework should include national principles that provide for:

- the full participation and engagement of Indigenous peoples in negotiations and agreements between parties
- the adoption of and compliance with the principle of free, prior and informed consent
- the protection of Indigenous interests, specifically access to our lands, waters and natural resources and ecological knowledge
- the protection of Indigenous areas of significance, biodiversity, and cultural heritage
- the protection of Indigenous knowledge relevant to climate change adaptation and mitigation strategies
- access and benefit-sharing through partnerships between the private sector and Indigenous communities
- non-discrimination and substantive equality
- access to information and support for localised engagement and consultation.

50 Aboriginal and Torres Strait Islander Social Justice Commissioner, *Native Title Report 2007*, Human Rights and Equal Opportunity Commission, Sydney. At: http://www.humanrights.gov.au/social_justice/nt_report/ntreport05/pdf/NativeTitleReport2007.pdf (viewed 14 October 2008).

51 Australian Government, Department of Climate Change, *Carbon Reduction Scheme Green Paper: Summary of Preferred Positions*. At <http://www.climatechange.gov.au/greenpaper/summary/preferred-positions.html> (viewed 25 November 2008).

In addition, greater involvement of Indigenous peoples in Australia's international negotiations for the "second commitment period" of the Kyoto Protocol, post-2012 is essential and urgent. Particularly in relation to the development of culturally inclusive rules around the operation of a national emissions trading scheme and the potential for international investment.

(c) Dispossession and Migration

Climate change will inevitably result in the migration and dispossession of Indigenous peoples who are displaced from their traditional lands and territories due to coastal and land erosion and rising sea levels. Indigenous island communities and those located along the coastline of Australia will be significantly affected with some people having no other choice than to move to higher lands on their islands, to other islands, or to the mainland. With a history of dispossession of Australia's Indigenous peoples, extensive engagement is needed to ensure that the mistakes of the past are not repeated, and that any cultural tensions that may arise as a result of relocations are minimised or avoided.

The Fourth Assessment Report of the Intergovernmental Panel on Climate Change found that the Torres Strait Islands are particularly vulnerable to the impacts of climate change.⁵² In discussions with a number of Torres Strait Islander people, the impacts are already being felt, with unprecedented flooding from surging king tides and the increasing intensity of extreme weather events:⁵³

Over the past two years, half the populated islands of the Torres Strait have experienced unprecedented flooding from surging king tides. According to the draft of the fourth Intergovernmental Panel on Climate Change report,...the king tides have exposed a need for better coastal protection and long-term planning to potentially relocate half the 4000 people living on the islands.⁵⁴

Case Study 1 in this report provides further discussion on the impacts of climate change in the Torres Strait region.

Indigenous people located in the remote interior will also be affected, particularly by deforestation, restricted access to natural food sources and other resources, and the degradation of lands and waters. This is becoming increasingly evident in the Murray-Darling region where non-Indigenous people are relocating from their farmlands and desert regions into urban centres. This has left Indigenous people to bear the brunt of the impacts of climate change, while also facing risks of involuntary relocation.

The development of well-intentioned mitigation strategies may also result in the dispossession of Indigenous peoples from our lands, through the loss of access to traditional lands, waters, and natural resources. In particular, where Indigenous lands will be in demand by transnational corporations for land to produce biofuels, and to plant monocultures for carbon trading offsets.⁵⁵

52 J Altman & K Jordan, *Impacts of Climate Change on Indigenous Australians: Submission to the Garnaut Review*, April 2008, pp 4-5.

53 D Billy, Kulkalgal (Torres Strait Islanders) Corporation, *Telephone interview with the Native Title Unit of the Australian Human Rights Commission for the Native Title Report 2008*, 18 September 2008, and J Akee, Mer Gedkem Le (Torres Strait Islanders) Corporation, *Telephone interview with the Native Title Unit of the Australian Human Rights Commission for the Native Title Report 2008*, 29 September 2008.

54 L Minchin, 'Not waving but drowning at the back door', *The Age*, 12 August 2006.

55 D Martinex, *Land Grab on a Global Scale*, Global Research (2008). At: <http://www.globalresearch.ca/index.php?context=va&aid=8646> (viewed 9 October 2008).

The lack of access to traditional lands, waters and natural resources could diminish our ability to care for country and to maintain culture. Indigenous peoples will no longer be in a position to undertake responsibilities to land and water management, which will result in environmental degradation, and impacts on overall health and well-being. This is not only a concern for Indigenous peoples. This will affect also Australia's biodiversity and ecosystem maintenance.

Additionally, Indigenous peoples from our neighbouring Pacific Islands may also be forced to migrate to Australia as a result of climate change, particularly in the event of sudden climatic events. Again, there are lessons to be learnt from the past in terms of relocating people and communities and the need to engage extensively to ensure that the impact on both the relocated and the host community is as minimal as possible. The Fourth Intergovernmental Panel on Climate Change warns that:

About 60, 000 to 90, 000 people from the Pacific Islands may be exposed to flooding from sea-level rise each year by the 2050's.⁵⁶

Further, the United Nations University estimates that by 2050 up to 200 million people globally will be displaced by environmental problems. They argue that the issue of migration represents the most profound expression of the inter-linkage between the environment and human security.⁵⁷

The future security of the Australian coastline will pose a significant challenge to governments and to the Indigenous peoples as many communities are located along the northern and western Australian coastline.

This will not only place extra pressure on Indigenous lands in Australia, and potentially dispossess those Indigenous peoples from their lands, but accommodating climate refugees will have a significant impact on the Australian economy.

(d) Deforestation and monocropping – deforestation vs reforestation

In Australia, industrial-plantation forestry has increased by 6,000km² in the past decade.⁵⁸ As a proportion of the total area of agricultural land, this may be regarded as a small change. However, in south-western regions of Victoria and the Riverina in the Murray-Darling Basin, new plantation forestry represents a significant change in land management. Problems that arise from this change in land use and land management includes:

- significant native vegetation removal and concomitant native animal removal
- monocrops are feral animal havens
- many of these crops experience herbicide application
- young tree growth in areas where they are not grown naturally has significance adverse affects on water supplies and ground water levels.⁵⁹

56 L Minchin, 'Not waving but drowning at the back door', *The Age*, 12 August 2006.

57 Australian Customs Service, *Annual Report 2006-07 – A Focus on Customs 2006-07 Corporate Priority, maintaining the community's confidence in the way we go about performing our role* (2007). At: <http://www.customs.gov.au/webdata/minisites/annualReport0607/pages/page36.html> (viewed 17 October 2008).

58 R Benyon, S Theiveyanathan & M Doody, 'Impacts of tree plantations on groundwater in south-eastern Australia', 54(2) *Australian Journal of Botany* 181, p 181. As cited by Indigenous Peoples Organisations Network, *Oil Palm and Other Commercial Tree Plantations, Monocropping: Impacts on Indigenous Peoples' Land Tenure and Resource Management Systems and Livelihoods – Indigenous Peoples Organisation of Australia Response*, Response to Item 4 of the Seventh Session of the United Nations Permanent Forum New York 21 April – 2 May 2008.

59 Indigenous Peoples Organisations Network, *Oil Palm and Other Commercial Tree Plantations, Monocropping: Impacts on Indigenous Peoples' Land Tenure and Resource Management Systems and Livelihoods – Indigenous Peoples Organisation of Australia Response*, Response to Item 4 of the Seventh Session of the United Nations Permanent Forum New York 21 April – 2 May 2008.

I am concerned about the impacts of current and historic land clearance and deforestation on Indigenous lands which has and will make way for the creation of large scale plantations in order to benefit from the carbon trading industry. In particular, opportunities under the new Carbon Pollution Reduction Scheme, mainly for people who created the problem by clearing our lands in the first place. The World Rainforest Movement is particularly concerned about these negative social and environmental impacts:

When natural ecosystems are substituted by large-scale tree plantations they usually result in negative environmental and social impacts: decrease in water production, modifications in the structure and composition of soils, alteration in the abundance and richness of flora and fauna, encroachment on indigenous peoples' forests, eviction of peasants and indigenous peoples from their lands, loss of livelihoods.⁶⁰

The Australian Government are of the opinion that the inclusion of forestry on an opt-in basis will provide an incentive for forest landholders, including indigenous land managers, to establish additional forests, or carbon sinks (forests planted for the purpose of permanently storing carbon). In particular, they argue that the incentive will be greatest for carbon sinks that are planted with no intention of cutting the trees down.⁶¹

While some indigenous people will be able to access economic opportunities from commercial tree plantations, others will not and may not see this option as appropriate. [Even where it is considered appropriate, the proposal for only landowners, long-term leaseholders and carbon rights holders to participate in the scheme has the potential to further limit Indigenous involvement. In many cases the consent of a Minister is needed to grant leases or create third party interests in Indigenous land. I believe these issues have not been sufficiently evaluated in terms of their potential to restrict Indigenous participation in emerging opportunities.]

For example, up to 75 percent of south eastern Australia has been cleared with only a few remnant River Redgum and other forests remaining.

Further north, the Indigenous lands of Melville and Bathurst Islands in northern Australia, have been devastated by the clearing and destruction of eucalypt forests. A Perth-based company, Great Southern Limited, has reportedly destroyed large tracts of native eucalypt forest which is being chained and burned and replaced with monoculture plantations to be wood chipped and exported to Asia.⁶² Upon investigation, the Federal Government recently found Great Southern Limited breached environmental conditions by clearing into a buffer zone that protects rainforests and wetlands. This project was approved under the condition that there would be no clearing within buffer zones designed to protect important rainforest and wetland habitats. The Company have been ordered to pay up to \$3 million to conduct remediation work.⁶³

60 World Rainforest Movement, *Tree Plantations: Impacts and Struggles*. At: <http://www.wrm.org.uy/plantations/material/impacts1.html> (viewed, 15 December 2008).

61 Australian Government, Department of Climate Change, *Carbon Pollution Reduction Scheme, Green Paper, July 2008 Summary Report*, pp 17-18. At: <http://www.climatechange.gov.au/greenpaper/summary/summary-report.html> (viewed 29 August 2008).

62 ABC News, 'Tiwi forestry company to payout millions after clearing protected area', *ABC NEWS*, 16 October 2008. At: www.abc.net.au/news/stories/2008/10/16/2392799.htm (viewed 17 October 2008).

63 ABC News, 'Tiwi forestry company to payout millions after clearing protected area', *ABC NEWS*, 16 October 2008. At: www.abc.net.au/news/stories/2008/10/16/2392799.htm (viewed 17 October 2008).

As stressed by the Australian Indigenous Peoples Organisation (IPO) Network:

New laws and policies addressing climate change and other environmental issues such as deforestation are being progressively introduced, which have the potential to erode Indigenous rights and interests. This is done both directly by overriding rights through legislation, or indirectly by promoting and prioritising commercial and non-Indigenous interests with little space and support for Indigenous peoples to meaningfully engage and access new opportunities.⁶⁴

Deforestation and changes in land use contribute significantly to global climate change due to the release of carbon dioxide when forests and forest products are burned. If the forest is converted to other uses such as agriculture, future carbon sequestration is also lost.⁶⁵

For every 25,000 hectares cleared, at least 4.7 million tonnes of greenhouse gas will be produced. The short rotation plantations will never have the capacity to absorb enough carbon to abate the emissions.⁶⁶

Additionally, Indigenous peoples' right to development is denied where deforestation and land clearing has provided a lucrative industry. As with many other examples Indigenous peoples are not employed or engaged in the timber or logging industry in any significant or meaningful way.⁶⁷

However, Indigenous lands offer mature established native forests (natural carbon sinks) that have a significant capacity for carbon abatement, and would benefit from carbon certificates in recognition of this, rather than being forced into plantations.

Natural carbon sinks are a key feature and economic option on Indigenous lands. The challenge for the Australian Government will be in providing leadership in its climate change policies and international negotiations to include native forests and national parks as options for Indigenous sustainable development and carbon sequestration in Australia.

While international programs such as the Reduced Emissions from Deforestation and Degradation in Developing Countries (REDD) exclude native forests as carbon sinks, the Voluntary Carbon Standard has released guidelines for avoided deforestation projects which accredit carbon credits through REDD.⁶⁸ Parties to the Kyoto Protocol also resolved to further consider ways in which benefits for avoiding deforestation can be included in current and future mechanisms at the UNFCCC COP13 in Bali as part of the Bali 'road map'. The Conference of the Parties noted:

64 Indigenous Peoples Organisations Network, *Oil Palm and Other Commercial Tree Plantations, Monocropping: Impacts on Indigenous Peoples' Land Tenure and Resource Management Systems and Livelihoods – Indigenous Peoples Organisation of Australia Response*, Response to Item 4 of the Seventh Session of the United Nations Permanent Forum, New York 21 April – 2 May 2008.

65 Forests Forever, *Forests and Climate Change*. At: www.forestsforever.org/climate2/html (viewed 3 September 2008).

66 The Wilderness Society, *Trashing the Tiwi's: The clearfelling of the Tiwi Islands' native forests*, August 2007.

67 R Benyon, S Theiveyanathan & M Doody, 'Impacts of tree plantations on groundwater in south-eastern Australia', 54(2) *Australian Journal of Botany* 181, p 181. As cited by Indigenous Peoples Organisations Network, *Oil Palm and Other Commercial Tree Plantations, Monocropping: Impacts on Indigenous Peoples' Land Tenure and Resource Management Systems and Livelihoods – Indigenous Peoples Organisation of Australia Response*, Response to Item 4 of the Seventh Session of the United Nations Permanent Forum New York 21 April – 2 May 2008.

68 World-wide Fund for Nature, *WWF guidelines on the key principles required for robust voluntary carbon offset project standards- A paper to accompany the report "Making Sense of the Voluntary Carbon Market – A Comparison of Carbon Offset Standards"*, March 2008. At: www.wwf.de/fileadmin/fm-wwf/pdf_neu/WWF_guidelines_for_voluntary_carbon_offset_project_standards.pdf (viewed 12 January 2008).

the further consideration, under decision 1/CP.13, of policy approaches and positive incentives on issues relating to reducing emissions from deforestation and forest degradation in developing countries; and the role of conservation, sustainable management of forests and enhancement of forest carbon stocks in developing countries.⁶⁹

A key issue in relation to avoided deforestation is the distribution of benefits. In developing countries Indigenous groups have raised concerns that REDD will mean that governments and industry get paid to stop activities that they should not have been conducting in the first place, such as extensive land clearing. They are particularly concerned that communities on the ground will not see any of the economic benefits derived from activities conducted on their lands, and that they will potentially be locked out of areas used for REDD projects.⁷⁰

The issues discussed above will be a significant barrier to sustainable development for Indigenous populations in developing countries. However developed countries with Indigenous populations, such as Australia should consider the impacts and opportunities arising from programs that relate directly to developing countries to ensure that policies regarding climate change and in particular land clearing and deforestation do not continue to disadvantage Indigenous peoples.

(e) Conservation and Heritage Listing

Conservationists and environmental groups have been working with and lobbying governments to increase the conservation on land with high biodiversity, particularly in light of the threats posed to Australia's biodiversity from the impacts of climate change.

Indigenous people are fully supportive of land and biodiversity conservation and this is evidenced by the constant efforts of Indigenous people to engage in land management and caring for country initiatives. However, what was a positive working relationship between the conservation and environmental groups has become disjointed due to the pressure on Indigenous peoples to develop sustainable communities by maximising the economic opportunities available to them on their lands and waters. From an Indigenous perspective, conservation and economic development are not necessarily mutually exclusive.

I am concerned however, that negotiations with governments are occurring without the participation of Indigenous people, and legislation is being developed and implemented without consultation or the consent of Indigenous communities. The *Wild Rivers Act 2005 (QLD)* is an example of where this has occurred. While this legislation gives the rivers protected status, Indigenous peoples are concerned that it also has the potential to limit rights to use the waterways for traditional activities such as hunting, and future economic development.⁷¹

69 United Nations Framework on Climate Change, *Report of the Conference of the Parties*, thirteenth session, held in Bali from 3 to 15 December 2007, Addendum, Part Two: Action taken by the Conference of the Parties at its thirteenth session, Decisions adopted by the Conference of the Parties, p 3. At: <http://unfccc.int/resource/docs/2007/cop13/eng/06a01.pdf#page=3> (viewed 15 December 2008).

70 Conservation International, *Backgrounder: REDD Policies and Indigenous Peoples*, November 7, 2007. At: http://portal.conservation.org/portal/server.pt/gateway/PTARGS_0_2_143329_0_0_18/REDD%20and%20Indigenous%20Peoples%20ver%204.doc (viewed 15 December 2008).

71 R Sullivan, 'A new voice for the Cape', June/July 2008, *ECOS Magazine* 143, p 13... At: www.publish.csiro.au/?act=view_file&file_id=EC143p11.pdf (viewed 15 October 2008).

Indigenous lands are also high on the conservation agenda for World Heritage Listing. Indigenous peoples have voiced their concerns that their lands are being 'locked up'.⁷² While some Indigenous peoples have advised that they support the need to protect their lands from high impact development, such as the Burrup Peninsula, the nomination and declaration of lands for World Heritage Listing must happen only with the free, prior and informed consent of Indigenous landholders.

These arrangements must also protect the rights of Indigenous people to development, and not restrict or exclude them from pursuing their aspirations on their lands.

Indigenous peoples have a right to development, including a right to the conservation and protection of our environment and the productive capacity of our lands and resources. We also have the right to utilise our lands, waters and resources in order to fulfil those rights. Additionally, Indigenous peoples have the right to determine and develop priorities and strategies for exercising our right to development.⁷³

3.3 Health and well-being of Indigenous people

Climate change is a significant and emerging threat to human health. However this threat is even more prevalent for vulnerable populations including Indigenous peoples.

Indigenous peoples in Australia do not enjoy the same opportunities to be as healthy as the non-Indigenous population particularly in relation to access to primary health care, medicines and health infrastructure. Achieving the right to health in Indigenous communities will be made harder as a result of climate change.

The right to health,⁷⁴ obliges a state to ensure that everyone – regardless of race – has an equal opportunity to be healthy.

Fulfilling a right to health mean that communities across Australia (whether Indigenous or non-Indigenous) should enjoy a similarly healthy standard of drinking water, be able to access roughly the same standard of fresh vegetables, fruits and meat, and have their sewerage and garbage removed. It also means that they should be able to enjoy, from a health perspective, the same standard of housing that is in good repair with functioning sanitation and is not overcrowded.

Recent developments in Indigenous health are aimed at reducing the current disparities between the health of Indigenous and non-Indigenous Australians. As a result of a two year campaign led by my Office, in March 2008, the Prime Minister and every major indigenous and non-indigenous organisation from the health, human rights, reconciliation and NGO sectors committed to a new relationship with the express purpose of eliminating the 17 year life expectancy gap between Indigenous and non-Indigenous Australians by the year 2030. These bodies also committed to halving Indigenous infant mortality rates within 10 years, consistent with the Millennium Development Goals. Those in the health sector must also be mindful of, and adapt strategies to accommodate, the effects of climate change on health outcomes in order to achieve these targets.

72 R Sullivan, 'A new voice for the Cape', June/July 2008, *ECOS Magazine* 143, p 13. At: www.publish.csiro.au/?act=view_file&file_id=EC143p11.pdf (viewed 15 October 2008).

73 *Declaration on the Rights of Indigenous Peoples*, Articles 23, 26 & 29.

74 *International Covenant on Economic, Social and Cultural Rights*, Article 12.

(a) General health and well-being

As discussed earlier in this chapter, the impacts of climate change on the natural environment have the potential to disturb Indigenous people's connection to country and their land and water management responsibilities. For Indigenous peoples whose land is life, there could be a range of direct and indirect health impacts including mental and physical impacts.⁷⁵ Green suggests:

When considering the likely health impacts from climate change on Indigenous Australians living in remote communities it is crucial to explicitly address the interconnections between the health of 'country', culture and mental and physical well-being.

For example, environmental change could affect traditional activities including ceremonial practices, hunting and bush tucker collection – impacts that have implications for mental health as well as nutritional intake.⁷⁶ Preexisting physical and psychological diseases caused by dispossession and poverty further challenge the ability of Indigenous communities to cope with the health impacts of climate change.⁷⁷

Recent assessments conducted on the impacts of climate change on health in Australia, highlight the potential for the onset of and increases in vector-borne, water-borne and food-borne diseases such as: malaria, dengue fever, Murray Valley encephalitis, Japanese encephalitis, melioidosis, leptospirosis and scrub typhus.⁷⁸

(b) Food security for remote Indigenous communities

The IPO Network in their submission to the United Nations Permanent Forum voiced their concerns that changing climatic patterns will affect the viability of food and water sources which impact directly on the life and health of Indigenous people:

The dietary health of Aboriginal communities is predicted to suffer as the plants and animals that make up our traditional diets could be at risk of extinction through climate change.⁷⁹

Access to fresh food and vegetables will be further limited by the increasing costs of transportation from major centres and storage where many communities run their electricity supplies off diesel run generators. Not only will the use of diesel generators continue to emit high levels of greenhouse gases but the supply of fuel is also becoming more expensive and less environmentally viable particularly for remote Indigenous communities.

75 D Green, *Climate Change and Health: Impacts on Remote Indigenous Communities in Northern Australia*, CSIRO Marine and Atmospheric Research Paper 012, Commonwealth Scientific and Industrial Research Organisation (2006), p 3. At: http://www.cmar.csiro.au/e-print/open/greendl_2006.pdf (viewed 16 December 2006).

76 D Rose, *Nourishing terrains: Australian Aboriginal views of landscape and wilderness*, Australian Heritage Commission (1996). As cited by D Green, *Climate Change and Health: Impacts on Remote Indigenous Communities in Northern Australia*, CSIRO Marine and Atmospheric Research Paper 012, Commonwealth Scientific and Industrial Research Organisation (2006), p 3. At: http://www.cmar.csiro.au/e-print/open/greendl_2006.pdf (viewed 16 December 2006).

77 D Green, *Climate Change and Health: Impacts on Remote Indigenous Communities in Northern Australia*, CSIRO Marine and Atmospheric Research Paper 012, Commonwealth Scientific and Industrial Research Organisation (2006), p 3. At: http://www.cmar.csiro.au/e-print/open/greendl_2006.pdf (viewed 16 December 2006).

78 D Green, *Climate Change and Health: Impacts on Remote Indigenous Communities in Northern Australia*, CSIRO Marine and Atmospheric Research Paper 012, Commonwealth Scientific and Industrial Research Organisation (2006), p 6. At: http://www.cmar.csiro.au/e-print/open/greendl_2006.pdf (viewed 16 December 2006).

79 Indigenous Peoples Organisations Network, *Response to Agenda Item 3: Climate Change Biological Diversity and Livelihoods: The Stewardship Role of Indigenous People's and New Challenges*, Seventh Session of the United Nations Permanent Forum, New York 21 April – 2 May 2008.

Salt water inundation of fresh water supplies will also impact on the capacity of Indigenous communities to grow fresh fruit and vegetables, and access fresh drinking water. The lack of fresh water will also have considerable impacts for those communities servicing Indigenous people suffering from chronic illnesses such as diabetes and renal disease, and requiring dialysis treatment. Some of these communities have fought tirelessly to obtain these services in their regions, and while few communities are equipped with the infrastructure to provide these crucial primary health services, those that do may again be required to travel to urban centres for treatment as a result of climate change.

Urgent research and assessment is required to determine the impacts on Indigenous people's health in remote and regional communities to ensure that residents on these communities have access to basic services including primary health care and the health services they require. Further, it is necessary to ensure that adaptive measures are preemptive rather than reactionary and that communities are in a position to respond from the outset.

In developing climate change responses to health for all Australians, governments will also need to ensure that provisions made for the assurance of health services are also available to and accessible by Indigenous peoples living in urban centres.

(c) Caring for Country

Reduced access to traditional lands can act as a determinant of health status, particularly where that land is culturally significant and provides sources of food, water and shelter.

A recent study conducted by the Menzies School of Health Research in collaboration with the traditional owners from Western and Central Arnhem Land, assessed the health outcomes of Indigenous people in relation to their involvement in natural and cultural resource management. Statistics confirm that the health outcomes in rural and remote areas of Australia are adversely affected by poor health among Aboriginal and Torres Strait Islander peoples who make up a greater proportion of residents in those areas.⁸⁰

The Healthy Country: Healthy People Study⁸¹ found that removing Indigenous peoples from their homelands had a negative effect on the health of both the tropical landscapes and those people removed, demonstrating a direct association between Indigenous 'caring for country' practices and a healthier, happier life.

The study also confirmed that Indigenous participation in both customary and contemporary land and sea management practices, particularly by those people living on homelands, are much healthier, with significant reductions in the rates of diabetes and cardiovascular disease.

For Wattaru in the Anangu Pitjantjatjara Lands, South Australia, the health outcomes have also improved, and this is in part credited to the Ku-ku Kan yini Project initiated in 2003. This local community has been successful in combining traditional and contemporary land management techniques resulting in increased employment

80 Charles Darwin University, 'Healthy Country Healthy People', *Origins magazine*, Edition 2 (2007). At: <http://www.cdu.edu.au/newsroom/origins/edition2-2007/origins-2-07-13-14.pdf> (viewed 16 December 2008).

81 Charles Darwin University, 'Healthy Country Healthy People', *Origins magazine*, Edition 2 (2007), pp 13-14. At: <http://www.cdu.edu.au/newsroom/origins/edition2-2007/origins-2-07-13-14.pdf> (viewed 16 December 2008).

outcomes and self esteem in the community, and has assisted in the control of illnesses such as diabetes.⁸²

If we are serious about closing the gap for Indigenous people, particularly those living in remote communities, then we must start with what we know. That is that, employment and economic development opportunities that are built on caring for country, and caring for culture, improve the lives of Indigenous people. Issues such as these must be considered in the development of climate change policy relevant to Indigenous peoples.

3.4 Protection of Indigenous knowledge's

Despite the existing evidence base in this area, mechanisms that protect and maintain Indigenous knowledge remain inadequate at both the international and the domestic level in Australia.

The protection of Indigenous knowledge's will be a specific challenge for Indigenous peoples and governments around the world in their attempts to respond to the impacts of climate change. Particularly environmental responses that rely on Indigenous peoples knowledge of biodiversity and ecosystem management. As this is a significant issue for Indigenous people and climate change, this issue is further considered at chapter 7.

4. Opportunities from climate change

The realisation of the challenges discussed above can be minimised if policy is developed that considers the contributions that Indigenous people can make to mitigate and adapt to the impacts of climate change.

To date, the Australian Government has predominantly focused on the economic potential of carbon markets through the development of an emissions trading scheme. While Indigenous people are seeking to be included in this emerging market, the opportunities for Indigenous peoples are much broader than this including:

- engagement and participation facilitated by the Indigenous Economic Development Strategy
- contributions to mitigation and adaptation measures
- The provision of environmental services
- Building sustainable Indigenous communities
- The inclusion of climate change outcomes in agreement-making

4.1 The Indigenous Economic Development Strategy

Minister Macklin in her Mabo Lecture in May 2008 announced that in order to progress the new approach to Indigenous affairs, the Australian government will be developing an Indigenous Economic Development Strategy (the Strategy).⁸³ If the Government are serious about building sustainable communities, the Strategy should have the potential to facilitate the engagement and full participation of Indigenous people in climate change related markets and opportunities.

82 Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice Report 2005*, Human Rights and Equal Opportunity Commission (2005), pp 26-27. At: http://www.hreoc.gov.au/social_justice/sj_report/sjreport05/pdf/sjr-chapter02.pdf, (viewed 30 June 2008).

83 Minister for Families, Housing, Community Services and Indigenous Affairs, the Hon J Macklin, *Beyond Mabo: Native title and closing the gap*, (Speech delivered at the 2008 Mabo Lecture, Townsville, 21 May 2008). At: http://www.fahcsia.gov.au/Internet/jennymacklin.nsf/content/beyond_mabo_21may08.htm (viewed 1 July 2008).

Text Box 4: Indigenous Economic Development Strategy (IEDS)

The Labor Party committed to improving the lives of Indigenous Australians through economic development as part of its 2007 election campaign.⁸⁴ While this strategy has not yet been finalised, the Indigenous Economic Development Strategy must be developed to enable economic development for as many Indigenous groups as possible, and be linked to streamlining and improving Indigenous rights under legislative arrangements such as native title and land rights, cultural heritage and under various environment protection and conservation legislation, carbon sequestration and climate change, industry development regulation,⁸⁵ and water legislation.

In particular, the discussion regarding the development of the IEDS draws attention to opportunities arising from water resources for local enterprise and local jobs. For example, the Australian Government has identified that in central Australia there are 'substantial ground water resources that have not been developed outside the town areas of Alice Springs and Tennant Creek'. Working with the Centrefarm Aboriginal Corporation set up by the Central Land Council, horticulture projects are able to be established with funding from the Aboriginal Benefits Account.⁸⁶ This development must take place in partnership with the traditional owners for those lands and waters. This is to ensure that:

- Indigenous priorities are addressed and not compromised
- the process is assured integrity by ensuring the full and effective participation and engagement of the traditional owners in decision-making
- traditional owner free, prior, and informed consent is obtained for development on their lands and waters.

The IEDS should provide a further mechanism by which Indigenous water rights are recognised and secured.

A commitment to an Indigenous Economic Development Strategy provides growing evidence that Government are slowly realising the important contribution Indigenous people can make in mitigating the impacts of climate change. Minister Macklin identified the need to maximise opportunities for economic development through native title and land based outcomes.⁸⁷ The success of the Strategy can be maximised by linking it to climate change policy and the opportunities it brings and by affording appropriate consultation and collaboration in setting priority directions and proposed outcomes.

84 Australian Labor Party, *Indigenous economic development*. At: http://www.alp.org.au/download/now/indig_econ_dev_statement.pdf (viewed 8 October 2008).

85 Industry development regulation may include industry activities such as mining, tourism, agriculture, forestry, pastoral, infrastructure, and fishing, for example, the Australian Government has also committed to ensure that Indigenous commercial fishing opportunities are included in local coastal fishing management plans.

86 Australian Labor Party, *Indigenous economic development*. At: http://www.alp.org.au/download/now/indig_econ_dev_statement.pdf (viewed 8 October 2008).

87 Minister for Families, Housing, Community Services and Indigenous Affairs, the Hon J Macklin, *Beyond Mabo: Native title and closing the gap*, (Speech delivered at the 2008 Mabo Lecture, Townsville, 21 May 2008). At: http://www.fahcsia.gov.au/Internet/jennymacklin.nsf/content/beyond_mabo_21may08.htm (viewed 1 July 2008).

To further support the importance of the Governments Strategy, a recent report published by Access Economics and Reconciliation Australia,⁸⁸ establishes a clear link between economic development and closing the life expectancy gap between Indigenous and non-Indigenous people. The report concludes there is a 'clear economic justification for government action to reduce Indigenous disadvantage' based on a reduction in the burden of disease and an improvement in the ability of Indigenous Australians to contribute to and share economic prosperity. A challenge for Government in considering the Strategy will be to ensure that the current barriers to achieving economic development in Indigenous communities are removed.

For example, as noted in my *Native Title Report 2005*,⁸⁹ 'rights to carbon credits in any trading are currently presumed to accrue to the nation state, not individuals or communities. Without a change to the laws and subsidisation by government to address these issues, the legal landscape will continue to hinder economic development more than the physical landscape'. While the Carbon Pollution Reduction Scheme proposes that individuals and companies will be able to acquire reduction permits, many Indigenous rights and interests (including on the Indigenous estate) are still limited by land tenure such as native title and national parks. This means that in some instances the ownership of carbon rights and the potential for benefits to accrue to Indigenous communities may only be on the basis of negotiated outcomes.

In seeking the views of Indigenous stakeholders on what they require to effectively engage in climate change economies, the North Queensland Land Council (NQLC) suggested that:

A co-ordinated national strategy about Aboriginal participation in economic development in sunrise industries arising from climate change needs to be developed and resourced to raise awareness and the capacity for Aboriginal people to participate in those industries.⁹⁰

The NQLC has recently employed an Economic Development Officer with special funding to assist in the development of enterprises associated with development or projects on lands subject to native title. Part of that officer's brief is to examine niche business opportunities associated with climate change, including alternative energies and reforestation.

It will be necessary for all relevant government departments to engage with Indigenous people and their organisations to ensure the success of the Indigenous Economic Development Strategy. The Australian Government Indigenous Coordination Centres (ICCs) have a particular responsibility for brokering capacity development and employment, participation, training and enterprise opportunities for Indigenous Australians in their region.

88 Australian Policy Online, *An overview of the economic impact of Indigenous disadvantage*, Report by Access Economics Pty Limited for Reconciliation Australia. At: http://www.apo.org.au/linkboard/results.chtml?filename_num=233195 (viewed 10 October 2008).

89 Aboriginal and Torres Strait Islander Social Justice Commissioner, *Native Title Report 2005*, Human Rights and Equal Opportunity Commission, Sydney, p136. At: http://www.humanrights.gov.au/social_justice/nt_report/ntreport05/pdf/NativeTitleReport2005.pdf (viewed 14 October 2008).

90 I Kuch, Transition Manager, North Queensland Land Council, Correspondence to T Calma, Aboriginal and Torres Strait Islander Social Justice Commissioner, Human Rights and Equal Opportunity Commission, 25 August 2008.

As discussed above, in relation to opportunities arising from climate change, a legislative framework outlining basic principles for engagement such as ‘good faith’, ‘free, prior, and informed consent’, and ‘authorisation’ will be required to support the Indigenous Economic Development Strategy. This framework should be incorporated into or reflected in emissions trading and associated legislation and should be developed with the full participation of Indigenous people, and may be similar to agreement-making processes that occur in native title negotiations. Legislation should ensure that parties seeking to engage with Indigenous people comply with the principles included in the framework and that Indigenous people are not further disadvantaged by negotiations.

4.2 Indigenous contributions to mitigate and adapt to climate change

Traditionally, Indigenous peoples around the world have been responding to climatic and atmospheric changes for thousands of years. Phenomena such as the ice ages and cyclones provide evidence of adaptation to these natural changes in our environments. However, the magnitude, accelerated pace and compound effects of climate change today are unprecedented, and present a major challenge to indigenous peoples’ capacity to adapt. Additionally, due to the forced removals and relocations of Indigenous peoples onto government controlled communities, traditional responses (such as moving to a less vulnerable part of their country) are not as effective, requiring more resources, and in some cases emergency service support, which is often hampered by the remoteness of these communities.

At the recent United Nations Permanent Forum, the Members concluded that:

Strategies for mitigation and adaptation must be holistic, taking into account not only the ecological dimensions of climate change, but also the social impacts, human rights, equity and environmental justice. Indigenous peoples, who have smallest ecological footprints, should not be asked to carry the heavier burden of adjusting to climate change.⁹¹

(a) Mitigation

The IPCC argue that climate change mitigation should be treated as an integral element of sustainable development policies. In particular, policies must be sensitive to the importance of the relationship between economic development and climate change to vulnerable communities.

Making development more sustainable recognises that there are many ways in which societies balance the economic, social, and environmental (including climate change) dimensions of sustainable development.

As discussed in the previous chapter, mitigation in the context of climate change means to intervene in order to reduce the sources of, or enhance the sinks, for greenhouse gases. However, some mitigation measures may have undesirable direct and indirect consequences for Indigenous communities. For example, biofuel initiatives aimed at reducing greenhouse gas emissions may lead to an increase in monoculture crops and plantations, resulting in a decline in biodiversity and food security.

91 United Nations Permanent Forum on Indigenous Issues, *Report on the seventh session (21 April – 2 May 2008, Economic and Social Council Official Records Supplement No. 23, E/2008/43, E/C.19/2008/13.*

The UNDP argue that while no amount of mitigation will protect people from climate change that is already inevitable, urgent action on mitigation is vital. They argue that no amount of adaptation planning will protect the world's poor from business-as-usual climate change. This means that if the industrial world continues to emit greenhouse gases at current levels adaptation measures will be inconsequential.

Effective mitigation measures will require a move towards low-carbon communities. Behavioural change and people's right to take responsibility will be crucial to the success of any mitigation measures.

Governments have a critical role to play in encouraging behavioural change to support the transition to a low-carbon economy. Setting standards, providing information, encouraging research and development, and – where necessary – restricting choices that compromise efforts to tackle climate change are all key parts of a regulatory toolkit.

The full and effective participation of Indigenous communities is crucial to the elaboration of state-developed mitigation measures to ensure that such schemes do not negatively affect vulnerable communities.

(b) Adaptation

Indigenous peoples will require support in adapting to the impacts of climate change on their lands, waters and their communities. Indigenous peoples may also be able to contribute to the development of broader adaptation strategies.

As Indigenous people are expected to be disproportionately affected by climate change, our adaptive capacity will be further limited by our dependency on natural resources and limited access to information. However, our customary practices including sustainable water use, traditional coastal management and erosion control all offer opportunities for Indigenous people to contribute to the development of adaptation measures. The Intergovernmental Panel on Climate Change argue, and I agree, that such practices should be promoted.⁹²

With regard to the adaptive capacity of Indigenous people to climate change, the Australian Government Department of Climate Change advised:

Our current understanding of the extent of this vulnerability and the resilience of Indigenous communities in the tropical north is limited. Analysis is required to ensure appropriate responses are taken to increase the adaptive capacity of these communities.⁹³

It is expected that the Australian Government's understanding of the vulnerability and resilience of Indigenous communities elsewhere in Australia, including arid and semi arid country, and the riverina, is equally lacking.

There is currently a high level focus on the impacts for those Indigenous communities in northern Australia where intact ecosystems and valuable biodiversity is a priority. However the impacts will be just as serious for those living in the southern regions of Australia, particularly where exposure to drought, and stress on wetlands are immediate concerns:

92 The Intergovernmental Panel on Climate Change, *Climate Change 2007: Impacts, Adaptation and Vulnerability*. The Working Group II Contribution to the Intergovernmental Panel on Climate Change Fourth Assessment Report, Part II, Cambridge University Press, Cambridge.

93 H Grinbergs (Assistant Secretary), Australian Government Department of Climate Change, *Correspondence to T Calma, Aboriginal and Torres Strait Islander Social Justice Commissioner*, Letter, 29 September 2008.

Climate change is very likely to threaten natural ecosystems, with extinction in some species. ...The resilience of many ecosystems can be enhanced by reducing non-climatic stresses such as water pollution, habitat fragmentation and invasive species. In river catchments, where increasing urban and rural water demand has already exceeded sustainable levels of supply, ongoing and proposed adaptation strategies are likely to buy some time.⁹⁴

Adaptation measures will be required and Indigenous communities will require significant support and capacity development in our efforts to adapt. With an intimate knowledge of the environments in which we live, it is expected that we will also be required in some instances to contribute to the adaptation effort. An example of where Indigenous peoples will be able to contribute to adaptation efforts will be in the conservation and maintenance of vulnerable ecosystems and biodiversity. Indigenous knowledge in this area will be particularly important. Protection of this knowledge will also be required to avoid misappropriation and exploitation.

Adaptation to new environmental conditions requires additional financial resources and technological capacity that most Indigenous communities do not have and are not able to access easily. While short-term adaptation activities are underway, resource and capacity constraints are limiting the implementation of long-term adaptive strategies.⁹⁵

In addition, any long-term plan to adapt to the impacts of climate change should:

- recognise the spiritual, economic, social and cultural significance that land plays in the lives of indigenous people
- recognise the contribution that traditional owners can make to custody and management of land and seas
- provide for the equal participation of Indigenous Australians in developing future strategies
- include funding and technical or skill transfer initiatives to ensure capacity for adaptation in Indigenous communities.

Enhancing and supporting the adaptive capacity of Indigenous peoples' will only be successful if it is integrated with other strategies such as disaster preparation, land-use planning, environmental conservation, and national plans for sustainable development. Further new regulation and laws relating to climate change and emissions trading will also require provisions that address the unique and specialised needs and interests of Indigenous peoples. This will mean that relevant government departments at both the national and state levels will be required to work closely together with Indigenous communities to define the priorities and develop adaptation measures. This co-operation has not happened as yet.

The Australian Government has confirmed its commitment to developing policies to adapt to and mitigate the impacts of climate change, with a strong emphasis on consultation and partnership with Indigenous Australians.⁹⁶

94 The Intergovernmental Panel on Climate Change, *Climate Change 2007: Impacts, Adaptation and Vulnerability*. The Working Group II Contribution to the Intergovernmental Panel on Climate Change Fourth Assessment Report, Part II, Cambridge University Press, Cambridge.

95 United Nations Permanent Forum on Indigenous Issues, *Climate Change and Indigenous peoples*. At: www.un.org/esa/socdev/unpfii/en/climate_change.html (viewed on 21 July 2008).

96 P Garrett, Minister for the Environment, Heritage and the Arts, Correspondence to T Calma, Aboriginal and Torres Strait Islander Social Justice Commissioner, Human Rights and Equal Opportunity Commission, 29 August 2008.

Further, Von Doussa urges governments to ensure that ‘Indigenous peoples custodial role over traditional lands, flow on impacts for environmental protection and caring for country, are fully taken into account when developing strategies for mitigation and adaptation’.⁹⁷

However, Indigenous people must be adequately resourced and remunerated for any climate change mitigation or adaptation activities undertaken, just as their non-Indigenous counterparts would be.

While our elders and ancestors could not have foreseen the devastation on our lands and waters, through thousands of years of conservation, land management and caring for country, Indigenous lands and waters continue to provide an important backstop to governments and industry now desperate to undo the damage caused by rapid industrial growth and consumption. Indigenous peoples have a real opportunity for economic development if governments are willing to recognise the important role we play in climate change mitigation.

A number of Indigenous groups around the country have formed working groups and are working together and with industry groups on climate change impacts and opportunities relevant to them and their regions, including:

- the National Indigenous Climate Change (NICC) Working Group
- the Indigenous Water Policy Group (IWPG)
- the Indigenous Community Water Facilitator Network (ICWFN)
- the Murray Lower Darling Rivers Indigenous Nations (MLDRIN)
- Message Stick Carbon Group

These groups are doing considerable work at the local, regional and national level, including working with their communities to develop an ‘Opportunities Framework’ for addressing climate change and a ‘National Indigenous Water Policy’.

Text Box 5: The National Indigenous Climate Change (NICC) Research Project

The NICC research Project is a national dialogue with representatives of corporate Australia to identify ways in which partnerships and synergies can be realised in an emerging carbon economy.

The NICC Project is currently working in partnership with the Commonwealth Scientific and Industrial Research Organisation (CSIRO), Monash University, the Australian Human Rights Commission (AHRC), corporate and industry partners, and various Indigenous communities to develop an opportunities framework to assist Indigenous Communities in Australia respond to climate change. It is anticipated that this Framework will identify:

- opportunities associated with the impacts of climate change
- opportunities associated with government, business and community responses to climate change

⁹⁷ J von Doussa (President of the Australian Human Rights Commission), *Climate change and human rights: a tragedy in the making*, Australian Human Rights Commission, Human Rights Law Seminar, Sydney, 20 August 2008. At: <http://www.humanrights.gov.au/legal/seminars/index.html>, (viewed 26 August 2008).

- how the Indigenous Community can best respond to these opportunities
- key regulatory issues or limitation in relation to adaptation responses and economic development opportunities
- a prioritisation of opportunities, including developing a method for prioritisation in consultation with the national Indigenous Climate change project group with a practical focus on four key regions across Australia (the Identified Project Sites).

The Opportunities Framework seeks to form part of the overall effort to engage the Indigenous community on climate change. A key aim of the Framework is embed a collaborative and joint-policy between all participants, in particular Indigenous and Corporate representatives, for future partnerships and local development across Australia. The Framework specific parameters and aims including:

- considering and evaluating possible opportunities at the Identified Project Sites
- identifying and estimating the costs associated with key threats from climate change for Indigenous communities at Identified Project Sites, along with any key financial impediments to participating in opportunities
- considering and suggesting design options to partner with business and governments in taking opportunities forward
- recognising this is an essential assessment intended to identify promising opportunities the Indigenous community can pursue in the near term – is not intended to be exhaustive
- making broader policy recommendations in relation to national opportunities.

More broadly, an ‘Australian Dialogue and National Framework’ co-convened by Patrick Dodson and Lt General John Sanderson may provide the framework for Indigenous participation and engagement in policy and program development including those addressing climate change.

Text Box 6: Australian Dialogue and National Framework

As articulated by Patrick Dodson on views about a national dialogue, fundamental principles could include:

- mutual respect for our different views and political positions
- search for common ground in pursuit of a nation that is seen as upholding the highest standards of international human rights
- desire to enhance and sustain cultural and social values as important components of Australian nation building open to the need for change where change will contribute to a better sense of Australian nationhood.⁹⁸

98 North Australian Indigenous Land and Sea Management Alliance (NAILSMA), *NAILSMA Discussion Paper, to support the NAILSMA delegates attending the 2020 Summit – Canberra, 19-20 April 2008*. At: http://www.nailsma.org.au/nailsma/downloads/NAILSMA_2020_0408.pdf (viewed 14 October 2008).

Some of the innovative work being done by Indigenous communities is currently independent of government involvement. Governments will need to respect the independence of these community devised and driven activities and allow Indigenous peoples to exercise self determination. However, these activities may still require some institutional support, such as funding, legislative or policy reforms and incentives. It will be important for government to be aware of the work that Indigenous communities are doing in this area to ensure that their policies and programs are consistent in their approach and reflect the work being done on the ground.

Non-Indigenous stakeholders such as CSIRO also acknowledge the important contribution of Indigenous people in addressing the impacts of climate change, and have developed a National Indigenous Engagement Strategy to facilitate their engagement and improve their relationships with Indigenous communities.

Indigenous engagement with various stakeholders in the non-Indigenous sector has also resulted in the participation of industry and corporate partners in projects regarding climate change and water issues on a number of Indigenous communities around the country.

4.3 The provision of environmental services – ‘culture based economies’

Indigenous people in areas of Australia have been perpetuating the concept of provision of environmental services for many years. However, Indigenous peoples around the world and in other parts of Australia, have been systematically excluded in the stewardship of their land, territories and waters. This has resulted in the exploitation of lands and resources and significant disruptions to our way of life, and the maintenance of our cultures and languages.

While the impacts of climate change for Indigenous peoples are potentially devastating, we must also be open to opportunities for Indigenous communities to engage in culture based economies. The culture based economy concept first and foremost supports Indigenous people’s choices around economic development. It fosters an approach around the provision of environmental services, as a fee for service, to support livelihoods and an economic approach that works primarily through Indigenous people living on country. Culture based economies’ have demonstrated their benefits for Indigenous people who remain on country, while also serving the broader public interest.⁹⁹

(a) Land and Water Management

There is significant scope for Indigenous people to provide necessary environmental services in areas of biodiversity conservation, land and water management, and carbon sequestration. In Northern Australia, culture based economies are already operating, providing important environmental services, such as the maintenance of biodiversity, that meet not only Indigenous aspirations but are in the national interest. For example, the WALFA Project in Western Arnhem Land, where savanna burning is mitigating wild fire, has resulted in economic, cultural, social, and environmental benefits for Indigenous people and the wider Australian community.

99 Indigenous Peoples Organisations Network, *Response to Agenda Item 8: Ongoing Priorities and Themes and Followup*, Seventh Session of the United Nations Permanent Forum, New York 21 April – 2 May 2008.

Governments also recognise the potential importance of environmental service provision by Indigenous peoples. In May 2007, the previous Australian Government launched the 'Working on Country Program'. This program established a precedent whereby the Australian Government purchases environmental services from Indigenous people, resulting in real employment opportunities for people on country. This approach is moving away from the long held approach that Aboriginal environmental service provision, was in the public interest of the nation, and therefore should be based on volunteerism. Programs such as this also recognise that these services are of such broader public interest, providing environmental, social and cultural benefits for all Australians, that they require more adequate support and remuneration. In this context expanding financial support for these programs is in our national interest.

While the Working on Country Program is limited to those who have already secured rights to their lands, environmental outcomes such as the maintenance, restoration, and protection of Australia's land, sea and heritage environment can be achieved by contracting Indigenous people to provide the necessary environmental services. This model is also being considered as a result of the *Cape York Peninsula Heritage Act 2007*, whereby joint management on National Parks is being facilitated through Indigenous Management Agreements which include Indigenous Ranger positions, and the first right of refusal for service contracts is to the Indigenous landowners.

The Australian Government has recently committed to providing \$90 million over five years nationally to train and employ up to 300 additional Indigenous rangers on Indigenous lands and waters to undertake environmental services. It is anticipated that these Rangers will specialise in:

- noxious weed and feral pest eradication
- fire management
- fencing and vegetation restoration
- the protection of endangered species.

Under this program, training will also be provided for these rangers using a nationally accredited land management qualification, supported by local knowledge.¹⁰⁰

While this is a positive contribution by the government bipartisan support for such projects is required to ensure funding and program sustainability into the future. In order to optimise benefits for Indigenous peoples support must extend beyond contract services. The next step is to ensure that funding and support not only provides employment opportunities, but also ownership and management responsibilities and benefits to achieve self sufficiency and flexibility to move between roles, whether it is as a contractor, a manager or an owner.

Additionally, with migration of peoples from other countries a looming challenge for Australia, Indigenous communities located along the north and western Australian coastline are well placed to contribute to Australia's border control by providing services that support our Customs Department in fulfilling their role. The Australian Government, in cooperation with the Western Australian, Northern Territory and Queensland Governments, piloted three Indigenous coastal surveillance programs over 12 months during 2006-07. The three participating communities: the Bardi Jawi people in the Kimberley region; the Maningrida community in the Northern Territory; and the Aurukun community on the western coast of Cape York in Queensland; engaged in activities including:

100 Australian Labor Party, 'Federal Labor to create up to 300 Rangers as part of Indigenous Economic Development Strategy', (Media Release, 5 October 2007).

- regular patrols of remote beaches to assist in the detection of unauthorised landings by foreign fishing vessels
- undertaking small scale patrols of remote islands, bays and creeks to look for evidence of illegal landings or fishing vessels
- reporting all evidence of landings and sightings of illegal activity to Customs for enforcement action.¹⁰¹

Concepts around stewardship and market based incentives have further supported an Indigenous approach to caring for country and Ranger programs. The Indigenous Ranger model is an excellent fit with the new globally emerging opportunities around the provision of environmental services, carbon and water trading and bio-security. This has been further strengthened by the scientific and political acceptance of climate change which includes mitigation and adaptation options that are opening up further opportunities for Indigenous peoples to assert their custodial obligations to care for and manage country.

(b) Biodiversity and Ecosystem management and maintenance

In many parts of Australia, Indigenous lands are adjoining pristine national parks that host many of our intact valuable ecosystems. Federal Minister for the Environment Peter Garrett acknowledges that:

A huge proportion of Australia's habitat is on Indigenous owned land and much of it is incredibly remote, so we rely on the dedication and skills of indigenous people to conserve it for all Australians.¹⁰²

Land management and maintenance of the biodiversity and ecosystems through programs including *Working on Country* and the development of Indigenous Management Agreements, as well as carbon abatement through fire management, and carbon sequestration may all be opportunities available to Indigenous land owners.

The introduction of joint management of national parks in Queensland under the *Cape York Peninsula Heritage Act 2007* may mean that Indigenous land owners can be formally recognised for sequestration provided through the management and maintenance of ecosystems, national parks and other reserve lands including intact forests on our lands. This may also be an opportunity for other Indigenous groups around the country where joint management on National Parks is occurring.

The Garnaut Review suggests that:

the removal of carbon dioxide from the atmosphere could be a substantial new source of revenue for managers of national parks and forests set aside for conservation.¹⁰³

The review indicates that for example the intact forests located in south-eastern Australia have the potential to remove around 136 Mt of carbon dioxide equivalent (CO₂-e) per year (on average) for the next 100 years.¹⁰⁴

101 Australian Customs Service, *Annual Report 2006-07 – A Focus on Customs 2006-07 Corporate Priority, maintaining the community's confidence in the way we go about performing our role*. At: www.customs.gov.au/webdata/minisites/annualReport0607/pages/page36.html (viewed 17 October 2008).

102 P Garrett, Minister for the Environment, Heritage and the Arts., 'Millions for ranger work', *Koori Mail*, Wednesday 22 October 2008, p 3.

103 R Garnaut, *The Garnaut Climate Change Review, Final Report*, Cambridge University Press, Commonwealth of Australia (2008), p 556. At: <http://www.garnautreview.org.au/chp22.htm> (viewed 17 October 2008).

104 R Garnaut, *The Garnaut Climate Change Review, Final Report*, Cambridge University Press, Commonwealth of Australia (2008), p 543. At: <http://www.garnautreview.org.au/chp22.htm> (viewed 17 October 2008).

However, the design of the final Carbon Pollution Reduction Scheme (CPRS) (and its complementary mechanisms) must be sensitive to and accommodate emerging land management arrangements. The realisation of opportunities such as these, will be dependent on the support of the Government to include national parks and other reserve lands as an option for carbon offset and sequestration. Recognition of land management and caring for country undertaken by Indigenous people on national parks (including the time prior to declaring the park) is also required to secure meaningful participation in the developing Carbon Pollution Reduction Scheme.

Garnaut has also confirmed the reduction capacity from savanna burning. He argues that although the principal source of greenhouse gas emissions in the Northern Territory is the result of savanna fires, wild fire management programs such as the Western Arnhem Land Fire Abatement Project reduces savanna fires through fire management, and significantly increases biosequestration¹⁰⁵ and protects carbon stored in vegetation sinks.¹⁰⁶ These and other examples of Indigenous land management must not be limited under the CPRS.

(c) Rehabilitation and restoration

Land management has been a recognised priority for Indigenous people and has been facilitated to a certain degree through government programs and land tenure mechanisms. However, the capacity for rehabilitation of lands and waters is very often considered only in the context of ILUAs and on lands waters where there has been mining activity. While it is important to continue this important work on land degraded by mining, as climate change priorities develop rehabilitation of country degraded by other activities such as agriculture, pastoral, land clearing, waste dumps, access development including roads and water, and tourism will become equally important. This issue will not be isolated to rural and remote communities.

Urban centres will also require rehabilitation services, particularly those located on waterways, and beaches where erosion is of growing concern. For example, rehabilitation activities are already being undertaken on lands in major cities such as Sydney where revegetation of native plants is happening on coastal areas. Indigenous people must be given opportunities to provide these services.

All levels of government, local, State or Territory and Federal have an opportunity to examine and promote the involvement of Indigenous communities in these ways. Urban Centres with major mining operations will also provide opportunities for Indigenous people to provide environmental rehabilitation services. For example, the Alumina plant in Gladstone Central Queensland, impacts not only the lands on which the alumina is mined, but the wharves and shipping used to transport the products also impact on the coastal environment including the Great Barrier Reef.

Rehabilitation and remediation of the environment will offer economic opportunities to Indigenous peoples on our lands, but will also contribute significantly to climate change mitigation efforts increasing the capacity for carbon sequestration and the effectiveness of natural systems to adjust to a changing environment.

105 Biosequestration is the removal of atmospheric carbon dioxide through biological processes, for example, photosynthesis in plants and trees, as defined in Australian Government, Department of Climate Change, *Carbon Pollution Reduction Scheme, Green Paper, July 2008 Summary Report* (2008), p 56. At: <http://www.climatechange.gov.au/greenpaper/summary/summary-report.html> (viewed 29 August 2008).

106 R Garnaut, *The Garnaut Climate Change Review, Final Report*, Cambridge University Press, Commonwealth of Australia (2008), p 556. At: <http://www.garnautreview.org.au/chp22.htm> (viewed 17 October 2008).

For example, the Garnaut Review has identified the potential for biosequestration in arid Australia, in particular the potential of Mulga lands to provide a carbon emission reductions with significant sequestration capability:

Arid and semi-arid rangelands currently make up about 70 per cent of Australia's land mass, or around 5.5 million km². Eighteen per cent of this area consists of chenopod shrublands, native tussock grasslands, and woodlands and shrublands that are dominated by mulga (*Acacia aneura*) in eastern Australia, within the 200 to 500 mm annual rainfall zone.

It is estimated that these rangelands could absorb at least half of Australia's current annual emissions or some 250 Mt for several decades. A carbon price of \$20 per tonne would provide up to a tenfold increase in income for property holders in this region if current practices were replaced by land restoration through a strategic property management program. The mitigation gains are potentially so large that it is important for Australia to commence work on program design and implementation even before the issues of coverage, national and international, are fully resolved.¹⁰⁷

The New South Wales Aboriginal Land Council (NSWALC) and Riverina Financial and Rural Management (FARM) have entered a partnership to maximise the benefits from carbon trading, through the development of Mallee tree plantations.

A property owned by the NSWALC, Baogga Karrai, approximately 60 kilometres west of Condoblin, has hundreds of hectares of oil mallee trees for carbon sequestration. The Mallee trees are planted in belts through cropping paddocks. The NSWALC owns a number of properties with similar potential to increase and trade soil carbon.

Soil carbon sequestration is seen as a promising new enterprise for NSWALC. Riverina Farm are researching and developing techniques and farming practices which may increase the accumulation of soil carbon on NSWALC land. If successful, this venture has the potential to create for the NSWALC one of the biggest soil carbon banks for future carbon trading on voluntary markets both nationally and internationally.¹⁰⁸

4.4 Sustainable Indigenous communities

As identified by the Minister for Families, Housing, Community Services, and Indigenous Affairs:

Finding ways to create and sustain socially and economically viable communities across regional and remote Australia is a major challenge for the nation. It is even more challenging when most of the people in these communities are Indigenous.

It is a challenge that has bedevilled governments for the last fifty years.

The reason is that we are dealing with a complex social and economic reality involving competing cultural perspectives, poorly defined institutional structures, extremes of poverty and dysfunctional communities, and long-standing failure of government.

New approaches must be developed and tried. But we must also be prepared to assess and evaluate what we do, and where the evidence points to failure or limited success, to change direction.¹⁰⁹

107 R Garnaut, *The Garnaut Climate Change Review, Final Report*, Cambridge University Press, Commonwealth of Australia (2008), p 543 & 557. At: <http://www.garnautreview.org.au/chp22.htm> (viewed 17 October 2008).

108 National Indigenous Times, *NSWALC embracing Carbon trading*. Article, p 24, Issue 167, Vol 7, 27 November 2008.

109 Minister for Families, Housing, Community Services and Indigenous Affairs, the Hon J Macklin, *Sustainable Indigenous Communities Forum Minerals Council of Australia*, (Speech delivered at the Sustainable Indigenous Communities Forum Minerals Council of Australia, 27 May 2008). At: http://www.jennymacklin.fahcsia.gov.au/internet/jennymacklin.nsf/content/sustainable_indig_comm_27may08.htm (viewed 25 October 2008).

Supporting community development opportunities will be crucial in increasing the capacity for Indigenous communities to respond to the impacts of climate change. Financial assistance, innovative investment strategies and/or business incubation models may all assist the development of appropriate, sustainable and responsible development projects with Indigenous communities.

(a) Alternative Energies

While climate change in and of itself is a diabolical challenge for governments around the world, the Australia environment provides the government with a number of options which contribute to increasing the sustainability of Indigenous communities. These options include all those mentioned above, but also include alternative sustainable energies. The introduction of low emissions energy supply technology such as solar and wind energy are opportunities that should be given serious consideration in the development of climate change responses, particularly in the context of achieving sustainable Indigenous communities.

The Garnaut review noted that the Government have to date:

committed low levels of government expenditure on research and development in key areas like energy supply, juxtaposed with the rising importance of low-emissions energy technologies for Australia's mitigation effort, suggest that current funding levels do not reflect the priority required to meet the rapidly changing pattern of demand established by an emissions trading scheme.¹¹⁰

Indigenous communities are a prime example of where these technologies could make a remarkable difference to the lives of their Indigenous residents and also contribute to meeting Australia's carbon reduction targets. The Bushlight Project is one such example.

Text Box 7: The Bushlight Project – Centre for Appropriate Technology¹¹¹

Bushlight is an innovative renewable energy project which aims to increase access to sustainable energy services within remote Indigenous communities across Australia through renewable and solar energy systems.

The Centre for Appropriate Technology (CAT) recognise the need for innovative and interactive energy services in remote communities, and are working with Indigenous communities in remote regions of Central and Top End Australia, to design robust, technically advanced renewable energy systems. By July 2007 this program had installed 97 renewable energy systems in 79 discrete communities in Australia.¹¹²

Bushlight strives to:

- improve the reliability of renewable energy systems in remote Indigenous communities
- improve the capacity and confidence of communities to choose and manage renewable energy services

110 R Garnaut, *The Garnaut Climate Change Review – The Innovation Challenge*, Chapter 18, Commonwealth of Australia 2008, At: <http://www.garnautreview.org.au/chp18.htm> (viewed 17 October 2008).

111 Further information about the Bushlight Project is available online at: <http://www.bushlight.org.au/default.asp?home>.

112 The discrepancy in numbers is due to a number of communities receiving multiple systems for a number of reasons.

- establish a technical service network to service and maintain reviewable energy services in remote communities.

This is particularly important in remote communities where often the only source of power for refrigeration of fresh food, heating and other basic essentials that we in the cities take for granted, is through diesel generators. Access is further limited where people are cut off by flood during the wet season, and have no access to town water, or power.

Bushlight focuses on:

- community education and empowerment
- developing and delivering good education and industrial resources
- building technical capacity on remote communities
- industry development

Communities which are considered suitable for a Bushlight renewable energy system must:

- be lived in for at least 36 weeks of the year
- have no access to grid power or be totally reliant on generators
- have secure land tenure or occupation rights
- have at least one permanent building meeting State or Territory construction standards.

There are three main Bushlight systems:

- *BL Household* – Standalone photovoltaic (solar) powered systems, typically designed to meet the electrical energy needs of a single household of 3-12kWh/day
- *BL Community* – Standalone photovoltaic powered systems, typically designed to meet the electrical energy needs of a community of 2-10 households/buildings using up to 50kWh/day
- *BL Hybrid* – Combined photovoltaic/generator powered systems with integrated centralised generators. Typically designed to meet the electrical energy needs of communities with numerous households and other buildings with a daily demand 40kWh or more.

Through a Community Energy Planning Model (CEPM) Bushlight work with homeland communities to plan and manage their energy services. This innovative approach to energy planning is transferable to other cultures and settings and operates through a dynamic partnership with local councils, resource agencies, community members and technical contractors. The process is also supported by a range of culturally appropriate resources designed specifically for local conditions.

Bushlight also support Indigenous communities through the provision of:

- Technical and financial information and advice about Renewable Energy (RE) systems for remote locations
- Demand assessments
- Pre-feasibility studies
- Collaborative project planning
- System design
- Institutional capacity building
- RE education and training-from simple use and maintenance through to high-end technical training
- Turn-key project management
- Project logistics
- Procurement
- Installation and associated capital works

- Culturally appropriate educational resources related to community engagement activities and system maintenance.

A total of 74 communities with Bushlight Renewable Energy systems have access to a service network comprised of Resource Agency or Community Council technical staff, qualified technical service providers under maintenance contracts, and Bushlight regional staff.

Not only does this project contribute to better access to infrastructure in the community and has the potential to provide jobs for community people, it also contributes to climate change mitigation and adaptation measures by reducing the amount of greenhouse gas that was previously being emitted by the fuel generators.

A project site for the Bushlight Project, Corkwood Bore is the relocation site for the Arrernte families of Harry's Creek East Outstation in the Northern Territory. The community was relocated in early 2004 due to the building of the "Alice to Darwin" railway line. Situated some 50kms north east of Alice Springs, this community comprises seven houses and has a permanent population of approximately 30 family members with a large extended family from both Arrernte and Warlpiri language groups. Bushlight was asked to assist by assessing and providing energy services to the new houses at the new site before the community moved in. Laurel Palmer, a resident at Corkwood Bore described her experience with Bushlight as follows:

At Harry's Creek the community only had candles, fire, wood water heater and a solar panel for lights which didn't really work. It was a bit hard back there. It was hard! The generator pumped water, when that ran out we had to collect water in jerry cans. We had to drive to the generator. We bought more tin food at Harry. Now we notice the differences – we now we have more money from not buying diesel. This means we can buy more food. Now we can eat more fresh meat and vegetables. We can keep them in the fridge. We shop fortnightly now and so don't go to town so often. We had no washing machine before. Now we have one and I only run that at lunch time, as I was advised by Bushlight to help the system run well.¹¹³

North Queensland Land Council have also advised that traditional owner groups within their representative region are considering the need and usefulness of alternative energies in their communities.

The serviced region includes some locations with high sunlight and wind generation potential as well as some well watered areas suitable for carbon sequestration schemes. As the number of Native Title determinations increase in the NQLC region and with larger amounts of land under Aboriginal control, traditional owner PBCs are in need of sustainable, environmentally friendly business opportunities. Some preliminary investigation of the industry has been made by the NNTC [National Native Title Council] and the larger communities of Yarrabah and Palm Island are looking at some options with the alternative power industry.¹¹⁴

Wind farms also provide an option for Indigenous involvement in renewable energy projects. The Cathedral Rocks Wind Farm for example will contribute directly to Australia's greenhouse gas reduction targets by supplying green energy to 25,000 homes on the Eyre Peninsula in South Australia each year. This project has been

113 Centre for Appropriate Technology, *Light and life in the bush – Bushlight*, Laurel Palmer, response to the CEP Review of the Bushlight Program in April 2005. At: <http://www.bushlight.org.au/media/case%20study/case%20study%20-%20-%20corkwood%20bore.pdf> (viewed 14 October 2008).

114 I Kuch, Transition Manager, North Queensland Land Council, Correspondence to T Calma, Aboriginal and Torres Strait Islander Social Justice Commissioner, Human Rights and Equal Opportunity Commission, 25 August 2008.

facilitated through the Federal Government's legislated Mandatory Renewable Energy Target, enhancing the viability of developing commercial wind farms.

This project is a joint venture between Hydro Tasmania and Spanish renewable energy company EHN.¹¹⁵

While the Indigenous peoples of this region are not partners in this project, the Industry partners have been working with the Port Lincoln Aboriginal Community Council to ensure the interests of the Indigenous communities are considered and respected. Similar projects may be an option for Indigenous communities located on appropriate lands.¹¹⁶

In some regions across Australia, Indigenous people have not been able to leverage economic opportunities from their lands. However, with the opportunities arising from climate change, relatively marginal land may now be in a position to be catapulted into becoming equal participants in emerging carbon markets',¹¹⁷ including bio-sequestration, renewable energy – be it wind, solar or other, waste to energy conversion opportunities and bio-char are all possible options.

For opportunities such as these to be successfully realised by Indigenous people, an assessment of the current land tenure arrangements is required. New policies and laws relating to land use and development (including housing and associated infrastructure) require an examination of how new interests and imperatives will impact upon (positively or negatively) Indigenous land, cultural, human and native title rights and interests.

4.5 Inclusion of climate change outcomes in agreement making

Indigenous Land Use Agreements and comprehensive settlement agreements provide opportunities for Indigenous people to leverage social, cultural, environmental and economic development through climate change mitigation projects such as the Bushlight Project.

Agreement making may also provide opportunities for Indigenous people to partner with industry and government and generate investment in offsets arising from land management, caring for country and wildfire management such as the Western Arnhem Land Fire Abatement Project.

In New South Wales, Indigenous groups have an opportunity to be involved in a biodiversity conservation program that operates in a similar way to the creation of carbon offsets. The NSW government is seeking to access land rights land for a "biobanking" scheme, which is a means of providing commercially based offsets for environmental damage caused through development activities.

115 Hydro Tasmania is a renewable energy business that has a history of almost 100 years of designing, constructing and operation hydro-electric power schemes and more recently, wind farms. It produces around 60 percent of Australia's renewable energy. EHN is the largest developer, owner and operator of wind farms in the world. EHN has installed over 2,200 megawatts of capacity in 80 wind farms in Spain, France, Germany, the USA, Canada and Ireland. At: <http://www.hydro.com.au/home/Corporate/Publications/Media+Releases/Cathedral+Rocks+Wind+Farm+generating+into+the+SA+grid.htm>.

116 Further information about the Cathedral Rocks Wind Farm is available online at: <http://www.hydro.com.au/Documents/Renewables%20Development/Cathedral%20Rocks%20fact%20sheet.pdf> (viewed 28 October 2008).

117 Message Stick Carbon Group, *Indigenous Economic Engagement: Response to Emissions Trading Scheme Discussion Paper*, (2008). At: [http://www.garnautreview.org.au/CA25734E0016A131/WebObj/D0852530ETSSubmission-MessageStickCarbonGroup/\\$File/D08%2052530%20%20ETS%20Submission%20-%20Message%20Stick%20Carbon%20Group.pdf](http://www.garnautreview.org.au/CA25734E0016A131/WebObj/D0852530ETSSubmission-MessageStickCarbonGroup/$File/D08%2052530%20%20ETS%20Submission%20-%20Message%20Stick%20Carbon%20Group.pdf) (viewed 16 December 2008).

BioBanking enables 'biodiversity credits' to be generated by landowners who commit to enhance and protect biodiversity values on their land through a biobanking agreement. These credits can then be sold, generating funds for the management of the site. Credits can be used to counterbalance (or offset) the impacts on biodiversity values that are likely to occur as a result of development. The credits can also be sold to those seeking to invest in conservation outcomes, including philanthropic organisations and government.¹¹⁸

Text Box 8: NSW BioBanking Scheme

The four main key elements of the BioBanking Scheme are:

- Establishing biobank sites on land through biobanking agreements between the Minister for Climate Change and the Environment and the landowners.
- Creating biodiversity credits for management actions that are carried out, or proposed to be carried out, to improve or maintain biodiversity values on biobank sites. The biobanking assessment methodology will be the tool used to determine the number of biodiversity credits that may be created for these management actions.
- The trading of credits, once they are created and registered.
- Enabling the credits to be used to offset the impact of development on biodiversity values. The methodology will be the tool that is used to determine the number and class of credits that must be retired to offset the impact of a development and ensure that the development improves or maintains biodiversity values.¹¹⁹

A Ministerial Reference Group was established to assist in finalising the BioBanking Assessment Methodology and the regulation. The group also:

- reviewed the results of the three-month pilot program to test the BioBanking Assessment Methodology
- will oversee implementation during the two-year trial of the scheme
- assists in the review of the scheme.

Membership of the Ministerial Reference Group does not include Indigenous representation. However, the Government has also developed a program that is specific to Indigenous engagement in BioBanking.

Indigenous engagement in the BioBanking scheme is being facilitated through the Land Alive Project. BioBanking, including Land Alive is a voluntary scheme.

This *Land Alive* project is all about building the skills and capacity of Aboriginal landowners so they can be among the early leaders in the BioBanking market.¹²⁰

Under this scheme, Indigenous landowners have an opportunity to enter into biobanking agreements, whereby they set aside some of their lands and agree to manage and conserve the natural values on that land forever.

118 New South Wales Department of Environment and Climate Change, *BioBanking*. At: <http://www.environment.nsw.gov.au/biobanking/index.htm> (viewed 15 December 2008).

119 New South Wales Department of Environment and Climate Change, *The BioBanking Framework*. At: <http://www.environment.nsw.gov.au/biobanking/biobankframework.htm> (viewed 15 December 2008).

120 Minister for Climate Change and the Environment, *Land Alive, Aboriginal management for biodiversity*. At: <http://www.environment.nsw.gov.au/resources/LandAlive/LandAliveWeb.pdf> (viewed 15 December 2008).

The agreement is added to the land title and outlines what owners must do to protect the site and improve its natural values. As part of the agreement, a management plan is developed which highlights the natural and cultural values worth preserving on the site, includes ideas for managing the land, and identifies opportunities for funding.

This project aims to provide Indigenous people with the acquisition of real skills, creating opportunities for long-term jobs. Participants will also gain practical experience, learning about the BioBanking Scheme and its benefits.

However, the biobanking scheme is based on the principle that it equates a loss of biodiversity in one area with a commitment to retain it in another. For example if a project developer was to clear an area of bushland it could offset the destruction of that land with another area of land that has been managed and conserved. The developer would buy 'biodiversity credits' from the landowners, The Department of Environment and Conservation would decide how much environmental damage the proposed development would cause, and how many credits the developer must buy to offset it. The compromise is that the biodiversity contained in the destroyed lands is lost for ever.¹²¹ One issue that is unclear in the first instance is whether there is a correlation between biodiversity credits and the systems/biodiversity damaged or destroyed. Under such arrangements, developers need to show how the impacts on biodiversity will be avoided, minimised or offset, and offsets need to match the nature of the biodiversity destroyed/impacted.

Land Alive is also an opportunity for Aboriginal ecological knowledge to be recognised alongside scientific approaches to land management. Aboriginal landowners can generate an income from land management while enhancing their role as land stewards with unique Aboriginal cultural knowledge. Provisions for the protection of this knowledge will also need to be included in the agreement.¹²²

A key question for Indigenous and non-Indigenous landholders will be the extent (if any) to which the same land, vegetation or trees can be used for the generation of biodiversity and carbon credits.

5. Indigenous Engagement with Policy Formulation

While it is clear from the discussion above that Indigenous peoples are currently participating in some areas climate change responses and opportunities, there remains an urgent need to ensure the full participation of Indigenous peoples in emerging opportunities and policy making processes. Effective Indigenous participation in decision making is essential to ensuring non-discriminatory treatment and equality before the law, and recognises the cultural distinctiveness and diversity of Indigenous peoples.

Appendix 5 provides an overview of the current State and Territory government climate change policies and the actions they have taken to ensure the engagement of Indigenous stakeholders in the development of these strategies.

121 Environmental Defenders Office (ACT), *Biobank sounds a lot like bunk*, Sydney Morning Herald Editorial, August 10, 2006. At: http://www.edo.org.au/edoact/newsletters/aug_06/biobanking.htm (viewed 15 December 2008).

122 Department of Environment and Climate Change NSW, *Land Alive, Aboriginal management for biodiversity*, (2008). At: <http://www.environment.nsw.gov.au/resources/LandAlive/LandAliveWeb.pdf> (viewed 15 December 2008).

To date, Indigenous engagement has proven to be a significant challenge for governments across all areas of policy. In October 2007, the Australian National Audit Office released the findings of a performance audit into whole of government Indigenous service delivery arrangements. They found that the transfer of ATSIC/ ATSIIS administrative responsibilities and funding to 'mainstream' Australian Government departments provided opportunities to develop more integrated solutions to entrenched Indigenous disadvantage.¹²³

While the report found that implementation of the Government's policy objective was progressing, it is also noted that a stronger collective focus by departments is required to meet their priorities, and to inform decisions relating to the effectiveness of ongoing administrative arrangements.¹²⁴

The current Indigenous policy platform remains isolated, disconnected and disjointed. If there is to be real change in Indigenous peoples lives, governments must work collaboratively and develop policy that deals with Indigenous disadvantage from a holistic perspective.

This means that:

- all relevant government departments must undertake a needs assessment to: examine legislation, policy, programs, funding and other support available; identify what mechanisms exist; and where the gaps lie that create barriers to achieving the aspirations of Indigenous communities
- governments must support policy development which firmly situates Indigenous people as the primary drivers of this new and emerging economic approach, particularly on Indigenous lands and waters. This includes national policy development and engagement with communities both within and beyond capital cities.

In the words of the Minister for Families, Housing, Community Services and Indigenous Affairs, it must be fully accepted that Indigenous stakeholders are 'substantive players and stakeholders in the future development of the nation'.¹²⁵ While there has been a commitment from Government to improve this standpoint, I am concerned that the bargaining position of Indigenous people remains unbalanced.

For example, at the national level here in Australia, the government have established an Indigenous Advisory Committee (IAC) under the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act). The IAC Committee provides advice to Government on issues relevant to Indigenous peoples, our lands and waters. However, Indigenous engagement is often limited to the terms of reference developed by the government and provides only a platform to inform the government, rather than to have a direct role in decisions which affect us.

123 Australian National Audit Office, *Whole of Government Indigenous Service Delivery Arrangements*, Audit Report No.10 2007-08. At: http://www.anao.gov.au/uploads/documents/2007-08_Audit_Report_101.pdf (viewed 26 November 2008).

124 Australian Government, Australian Public Service Commission, *State of the Service Report: Whole of Government, APS developments*, (2008). At: <http://www.apsc.gov.au/stateoftheservice/0607/partten/developments.htm> (viewed 26 June 2008).

125 Minister for Families, Housing, Community Services and Indigenous Affairs, J Macklin, *Beyond Mabo: Native title and closing the gap*, 2008 Mabo Lecture, James Cook University, Townsville, 21 May 2008. At: http://www.fahcsia.gov.au/Internet/jennymacklin.nsf/content/beyond_mabo_21may08.htm (viewed 1 July 2008).

There is considerable frustration that the IAC is effectively excluded from the workings of the EPBC Act. This is evidenced by the efforts of the IAC for example, to argue the significance of the Burrup Peninsula on the Dampier Archipelago in Western Australia, and their advice has been largely ignored.

Additionally, there should be input through the IAC at the international level on issues that are relevant to Australia, the Asia Pacific region, and the wider international community, including those matters protected under the EPBC Act (nationally threatened species and ecological communities; migratory species; Commonwealth marine areas; nuclear actions including uranium mining; Ramsar wetlands; World Heritage Listed places and places on the National Heritage List).

While it is recognised that the ability of the IAC to give advice in the past has been a direct result of the government of the day, the current Government must undertake to seriously consider the scope of this committee.

Additionally, in the absence of a national Indigenous representative body, mechanisms such as the IAC provide an avenue for Indigenous people to convey relevant policy advice on climate change issues. However, in light of the extremely rapid development of climate change policy, including an emissions trading framework, mechanisms that enable the effective engagement and participation of Indigenous peoples, including access to information and advice both nationally and internationally are urgently required.

In the immediate sense, this will require:

- Government to provide committed support to Indigenous driven peak forums such as NAILSMA, MLDRIN and the NICC Project, as well as to other representative organisations such as the National Native Title Council and other peak land and sea representative Committee's.
- Committed support for the development of a new National Indigenous Representative Body (depending on its final structure and mandate).¹²⁶

5.1 Climate Change Litigation

With the Australian Government encouraging a more flexible approach to native title that avoids litigation, climate change poses a new challenge to Indigenous peoples' rights and interests that has the potential to result in litigation. Particularly where Indigenous peoples lands and waters are being targeted for climate change related market opportunities, and Indigenous cultural heritage and identity are at risk of being affected or damaged.

In Australia, climate change litigation is part of a growing body of jurisprudence. Climate-related legal action has focused on administrative action in planning and environment decisions, with varying degrees of success.¹²⁷

However, internationally there are a number of examples where Indigenous peoples and communities have taken legal action regarding climate change issues.

126 The Australian Government, Department of Families, Housing, Community Services and Indigenous Affairs is currently conducting national consultations on the development of a National Indigenous Representative Body. For further information about the proposed representative body see www.humanrights.gov.au.

127 R Ghanem, K Ruddock and J Walker, 'Are our Laws Responding to the Challenges Posed to our Coasts by Climate Change?', *University of New South Wales Law Journal*, (2008) 31 (3), as cited by E Gerrard, 'Climate Change and Human Rights: Issues and Opportunities for Indigenous Peoples', *University of New South Wales Law Journal Forum*, (2008) 14(2), p 71.

Gerrard highlights three examples:

- the Arctic Inuit people petitioned the American Government at the Inter-American Human Rights Commission in December 2005 to establish mandatory limits on greenhouse gas emissions and help Arctic Inuit people adapt to the unavoidable impacts of climate change. The key argument of the was that the impacts in the Arctic of human-induced climate change infringe upon the environment, subsistence, and other human rights of the Inuit people
- the Alaskan native village of Kivalina is currently pursuing a lawsuit against a number of oil, coal and power companies for their contributions to global warming and the impact on homes and country disappearing into the Chukchi Sea.¹²⁸ The village is facing relocation due to sea erosion and deteriorating coast. The Kivalina are seeking monetary damages for the defendants' past and ongoing contributions to global warming, public nuisance and damages caused by certain defendants' acts in conspiring to suppress the awareness of the link between their emissions and global warming¹²⁹
- legal action taken by communities in Nigeria against Shell and other oil companies in relation to gas flaring, which was also successful on environmental and human rights grounds.¹³⁰

In the development of climate change law and policy in Australia, consideration of the above case law may provide further guidance for appropriate protection for Indigenous peoples human rights regarding climate change.

6. Close the Gap – Join the Dots

In order to close the gap on Indigenous disadvantage, we must actively work together to join the dots between different policy areas. It is particularly important to make the linkages between policies and laws that deal with land, water, natural resources and the environment, and other areas such as health, education, social and economic development and human rights.

Much of the failure of service delivery to Indigenous people and communities, and the lack of sustainable outcomes, is a direct result of the failure to engage appropriately with Indigenous people and of the failure to invest in building the capacity of Indigenous communities. This includes the lack of support for Indigenous staff, and

128 *Native Village of Kivalina and City of Kivalina v Exxon Mobil Corporation and others*, Complaint for Damages and Demand for Jury Trial (US District Court, Northern District of California, 28 USC 1331, 2201). The complaint was lodged in February 2008. A motion to dismiss was recently filed by defendants and a hearing date has been scheduled for December 2008. As cited by E Gerrard, 'Climate Change and Human Rights: Issues and Opportunities for Indigenous Peoples', *University of New South Wales Law Journal Forum*, (2008) 14(2), p 71.

129 *Native Village of Kivalina and City of Kivalina v Exxon Mobil Corporation and others*, Complaint for Damages and Demand for Jury Trial (US District Court, Northern District of California, 28 USC 1331, 2201). As cited by E Gerrard, 'Climate Change and Human Rights: Issues and Opportunities for Indigenous Peoples', *University of New South Wales Law Journal Forum*, (2008) 14(2), p 71.

130 The plaintiffs in this case argued that gas flaring produced air pollution and constant heat, light and noise. In November 2005, the Federal Court of Nigeria determined that actions of the oil companies constituted a gross violation of community members' fundamental human right to life (including healthy environment) and was a violation of human rights protected by the Constitution of the Federal Republic of Nigeria. *Gbmre v Shell Petroleum Development Company Nigeria Ltd and others* (Suit No. FHC/B/C/53/05, Federal Court of Nigeria, 14 November 2005). As cited by E Gerrard, 'Climate Change and Human Rights: Issues and Opportunities for Indigenous Peoples', *University of New South Wales Law Journal Forum*, (2008) 14(2), p 71.

the lack of appreciation of the skills that we bring, in particular to land and sea management on our country.

There is an urgent need for Government to develop mechanisms which ensure that rights are expressed, applied and exercised equally and consistently across the country. Legislative arrangements are required which, while recognising the cultural diversity of Indigenous nations, provide a minimum standard across all levels and jurisdictions of government to:

- ensure the effective participation of Indigenous peoples in the development of policies which directly affect our lands and waters
- consult with Indigenous peoples to get our free, prior and informed consent for any proposals on our lands and waters
- emphasise policy approaches which are evidence based, supported by trialled processes and ongoing evaluations that involve indigenous peoples
- ensure that legislative developments do not remove or restrict any existing rights; legislative or otherwise.

While the government purports a changing attitude towards improving the lives of Indigenous people, achieving actual change will involve a number of critical steps that have been discussed throughout this chapter.

These steps include:

1. A full understanding, recognition and respect for Indigenous peoples rights to our culture and our country.
2. Developing policy that deals with Indigenous disadvantage from a holistic perspective.
3. Engaging Indigenous people as major stakeholders in the development and implementation of policies and programs that affect us.
4. Increasing the cross cultural competence of bureaucracy to ensure policies and programs support the sustainability and self determination of Indigenous communities.

These steps are very broad and apply to all areas of Indigenous policy including climate change, land management, cultural heritage and native title.

Text Box 9: Attitudinal change requires:

Step 1: A full understanding, recognition and respect for the rights and responsibilities of Indigenous peoples to our cultural and our country by the Australian community and all levels of Government.

To fully understand this, it must be accepted and acknowledged that culture is the key to caring for country, and caring for country is in turn the key to the maintenance and strengthening of our culture and well-being.

International law, including the Declaration on the Rights of Indigenous Peoples, also provides for the protection of Indigenous peoples rights to care for our country, and rights to care for our culture. In particular the Declaration affirms and recognises Indigenous peoples rights to maintain and strengthen our relationships with our lands, territories, waters and resources and to ensure their viability for future generations.

This is reinforced by the right to practice and revitalise our cultural traditions and customs including our dances, songs, and stories which also contribute to the broader Australian communities visual and performing arts and literature.

Step 2: A holistic approach to overcoming Indigenous disadvantage.

This can only be achieved through Government and Indigenous people working in partnership and utilising best practice models to realise outcomes. However, the support we require from government is not in the form of mainstreaming, or complete regulation of our affairs. Collaborative partnerships in which both Indigenous people and governments work together as equal partners, will achieve sustainable outcomes that address the development aspirations of Indigenous peoples.

Further, legislative or constitutional amendments may be required. We will require heads of government to work together collaboratively to improve the lives of Indigenous peoples. This will require the full participation and engagement of Indigenous peoples in decision-making at all levels, from the local level to providing ministerial advice, and it will require governments to change their attitudes towards Indigenous peoples as stakeholders in the nation.

Step 3: The full acceptance and treatment of Indigenous people as major stakeholders in the development of all policy in Australia.

This will particularly important where policies such as those addressing climate change, will directly or indirectly affect our lives and the exercise and enjoyment of our human rights. In order for Indigenous people to effectively engage as major stakeholders, we must be afforded the right to free, prior, and informed consent. This principle applies not only to administrative acts and decisions about land use, but also to the legislative process itself.

Free, prior, and informed consent recognises Indigenous peoples inherent and prior rights to our lands and resources and respects our legitimate authority to require that non-Indigenous stakeholders enter into an equal and respectful relationship with us, based on the principle of informed consent. This means that we must also be fully apprised of the benefits and costs resulting from legislative and policy developments, or negotiated agreements.

Step 4: A change in approach by the bureaucracy.

A shift is required from a system that predominantly meets the policy aspirations of government, to a system that is accountable to the achievement of healthy Indigenous communities through sustainable development and self-determination.

In conclusion, the contribution of Indigenous people in tackling climate change has not been recognised sufficiently by governments. Nor have governments effectively engaged with our peoples in developing climate change policies across the full spectrum of issues to be faced.

This applies not only to exploiting economic opportunities on Indigenous land for mitigation strategies, but also to the need for proper understanding of the custodial role and responsibility we have over our traditional lands. Indigenous peoples must be engaged and included in developing strategies for mitigation and adaptation.

Only once we have successfully implemented these steps can we pride ourselves as a mature nation, one that embraces Indigenous peoples, our unique culture and traditions and recognises and respects us as the first peoples of Australia.

Recommendations

- 5.1 That the Australian Government's focus on the economic aspects of Indigenous inclusion in climate change policy is extended to include social, cultural and environmental policy considerations.
- 5.2 That the Australian Government consider the particular impact of climate change on Indigenous peoples' human rights and ensure these are addressed when developing responses.
- 5.3 That in developing and implementing climate change policy, the Australian Government ensure that Indigenous communities are not further disadvantaged. The Australian Government should ensure that:
 - Indigenous peoples do not bear an inequitable proportion of the cost of climate change
 - Indigenous peoples existing rights and interests are not jeopardised
 - Indigenous peoples rights to lands and water, access to carbon resources, and other rights and interests are enhanced and fully protected.
- 5.4 That government departments which have specific responsibilities for Indigenous affairs (for example, FaHCSIA and Attorney-General's Department), work closely with departments responsible for climate change policy to ensure that the social, cultural, environmental and economic impacts of climate change on Indigenous peoples are identified and addressed. For example, how native title and land rights can help facilitate opportunities arising from climate change and carbon markets.
- 5.5 That the Australian Government fulfil its commitment to develop a legislative framework that provides for Indigenous participation in carbon markets that includes national principles for engagement with Indigenous peoples, including:
 - the full participation and engagement of Indigenous peoples in negotiations and agreements between parties
 - the adoption of, and compliance with, the principle of free, prior and informed consent
 - the protection of Indigenous interests, specifically access to our lands, waters and natural resources and ecological knowledge
 - the protection of Indigenous areas of significance, biodiversity, and cultural heritage
 - the protection of Indigenous knowledge relevant to climate change adaptation and mitigation strategies
 - access and benefit-sharing through partnerships between the private sector and Indigenous communities
 - non-discrimination and substantive equality
 - access to information and support for localised engagement and consultation.
- 5.6 That the Australian Government ensure an ongoing commitment to these recommendations by seeking bipartisan support for Indigenous participation and engagement in climate change policy.